INSTITVTIONS,

Or

Principall grounds of the Lawes and Statutes of England.

*Newly and very truely cor-*rected and amended, with *many new and good additi-*ons: Very profitable for all *sorts of people to know, late-*ly augmented and Imprinted.

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Cum Priuilegio.

The Prologue of the Author to the *Reader.*

DEmoſthenes the renowned Orator, defineth Law in this wiſe. The Law (ſaith he) is the thing that all men ought to obey for many cauſes, but eſpecially becauſe law is the inuention, & alſo the gift of God, the decrees of prudent men, the chaſtiſement of offences, and finally the common ſuerty of a Realme, whereby it becommeth all men to liue, which bee conuerſant in the ſame. Chriſippus alſo; an excellent Philoſopher, thus beginneth his book of laws. The Lawe is King of all, as well diuine as humane affaires, the preſident and controuler of things honeſt and diſhoneſt, the Prince, the Captaine and ruler of the iuſt and vniuſt, & it is of ciuil creatures, aſwell the cõmander what they ought to doe, as the forbidder, what they ought not to do. Theſe authentike ſayings of wiſe men, aſſuredly ought much to inflame vs to the knowledge of thoſe things without which we ſhall be eſteemed as no men, but as brute & ſauage beaſts. Let vs not cõmit that, that it be ſaid of Engliſhmẽ, as it was once ſaid of the men of Athens, that is, that we make very good & profitable laws, but we vſe thẽ not. Certainly ther can be no greater reproch to a

cõmon weale, thẽ this. One lesson I would we learned of the anciẽt Romane lawyer named Celsus, & that is this: the knowledge of law is not to beare away the words, but the pith and power of them. This is written, because there be many which when good & holesome laws be made, seeke not to see them executed, and obserued, but rather how to defraud them & to haue them vnexecuted, which kind of people after the sentence of most auncient Lawmakers, be no lesse worthy of reprehension then they which doe expresly against the law. Now they doe (say they) against the Lawe, which doe the thing that the law forbiddeth. And they defraud a Law or Statute, which the wordes of the Lawe saued, doe peruert the meaning and sentence of it.

Let vs then so read the Law, that we may beare away the sense and meaning of them, and so fulfill and obserue the laws, that it may appeare that they were not made in vaine. Thus doing we shall please God, we shall be obedient subiects to our Prince. And finally, wee shall seeke our owne weale and safetie.

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What is Law? Chap. 1.

THe Law is the direction & miniſtration of Iuſtice. And Iuſtice is (as the Emperour Iuſtinian ſaith in his Inſtitutions) a conſtant and permanent will, to render vnto euery perſon his right and duty. The learning or prudence of law, is a knowledge of diuine and humane thinges, a ſcience & perfect notice of equitie, & inquirie, of right or wrong.

Now forasmuch as a great portion of the prudence, of ſcience of the lawes of this realme of England, conſiſteth in the perfit knowledge of Eſtates, which men haue in lands and tenements, we ſhall firſt as compendiouſly, and as ſimply and plainly as we can, treate ſomewhat of eſtates.

A diuiſion of Eſtates. Chap. 2.

YE ſhall therfore vnderſtand, that whoſoeuer hath any eſtate in landes or tenements, either hee hath in the ſame onely a chattell, or a free-hold, or an inheritance. If hee hath an eſtate but for terme of certaine yeres, or at his landlords will, then it is called a chattell, if for terme of his life, or for any other mans life, it is called a freehold. And if he hath to him and to his heires in fee ſimple or in taile, then he hath an eſtate of inheritance.

Chattle.

Freehold

Inheritance.

Tenant for tearme of yeares. Cap. 3.

TEnant for terme of yeares, is he to whom landes or tenements be let for terme of ter-

taine yeares as is agreed betweene the Landlord and the tenaunt. And when the person to whom such lease is made, doth enter by force of the said lease, & is in possession of the same: then he is called a tenant for tearme of yeares.

Rent reserued.

And here ye shall note, that if the lessour that made the lease, hath reserued vnto him a yearely rent vpon the saide lease, as it is accustomably vsed to be done, if the rent be behinde & vnpaide, it shal be in his lection, either to enter and distraine for the rent, or to bring an action of debt against the tenant for the arrerages of the same. But in this case it is requisite, that the lessour were seased of the Landes or tenements at the time of the making of the lease, for otherwise it shall bee a good plee in the action of debt for the tenaunt, to say the lessour had nothing in the landes & tenements at the time of the Lease made, except the Lease were made by deede indented, for then the plee shall not be in the Tenaunts mouth to plead.

Action of debt

A good plee.

Liuerie of season needeth not in a leate for terme of yeares.

And it is to be knowen, that in a Lease for terme of yeares, whether it bee by deede, or without deede, there neede no liuerie of seaton to bee made to the lessee, but he may enter when he will by vertue of his Lease, without any further ceremonie of the law.

And if a man leaseth Landes for terme of yeares, though the lessour chanceth to die before the lessee doth enter, yet hee may enter well enough. Otherwise it is where liuerie of seaton is to be made, as in freeholds and inheritances.

Waste.

Also if the tenaunt for yeares doth waste, the Landlord may bring an action of waste against him,

him, and shall recouer the place wasted, and his treble damages.

Also if a lease for yeares be made of two seuerall things, and after the one is recouered, the lessee shall hold the other, and the rent or farme shall be appoꝛcioned. M.12.H.8.

Also if the tenaunt for yeares graunteth a greater estate in the land, then he hath himselfe, whereby he conueyeth the fee simple to himselfe, he shall forfeit his leale or terme. Forfaiture.

Tenant at will. Chap. 2.

TEnant at will, is hee, to whom landes or tenements be leased to haue and to holde the same at the will of the lessour. And in this case the lessour may put out his tenaunt at what time him liketh. But yet neuertheless, if the tenaunt haue sowed the groundes with Corne, in this case if the lessour will enter and put out his tenant before Haruest, the lawe will giue him free comming and going to reape and carry his Corne away, without any punishment or damages to bee sustained for his so doing, because hee knewe not at what time the lessour would enter. But otherwise it is of tenant for terme of certain yeares, for if he soweth the grounde, and his terme of his leale be come out and erpyre before the corne be ripe, in this case the lessour, or he in the reuersion may enter and take the Corne, because it was the folly of the tenant to sowe the ground, knowing the end of his terme.

In likewise, tenant at will shall haue free comming & going after the time of the lessours

entrie, to cary away his houshold stuffe & goods for a reasonale space.

Distrer, or action of Debt.

Ye shall also understand, that he that maketh a leale at will, may reserue an annuall or yearely rent, in which case if the rent be behind, he may enter very well, and distraine the goods and chatts of the tenant, or at his election he may bring an action of debt against him.

Waste.

Also it is to be knowen, that tenant at will of a house or tenement, is not bound by the order of the lawe to sustaine and repaire the houses that be decayed and ruinous, as is the tenant for yeares, and therefore no action of wast lieth against him: yet if he will do wilfull wast, as if he plucketh downe the houses, or cutteth downe the trees: it hath bene thought by the Sages of the law, that the lessour may bring an action of

Tresp asse.

Tresp asse against him, and shall recouer his losses thereby sustained.

And if such a tenant die, and his heire enter, in that case the lessour may haue an action of Tresp asse against the heire for his entrie.

Tenant by Copy of Court roll. Chap. 5.

THere is another kind of tenant at will, which is called Tenant by Copie of the Court Rolles. And this is, when a man is seised of a mannour, within which it hath bene vsed time out of minde, that the tenants within the bounds and precinct of the said mannour, haue holden lands & tenements to them and to their heyres in fee simple, fee taile, or for terme of life, at the will of the Lord, according to the customs of the mannor. And such a tenant

tenant cannot alien or sell his land by his deed, for if he doe, the land or tenement that is so alienated and sold, is forfait into the Lord handes, but if hee will alien his copphold land to an other, he must according to the custome, come into the Lords Court, and there surrender it into the Lords hand, to the behoofe and vse of him that shall haue the estate. The forme of which surrender is commonly vsed to be thus. Surrender.

The forme of a surrender.

Ad hanc Curiam venit A. de B. & sursum reddidit in eadem curia vnum messuagium, &c. in manus domini, ad vium C. de D. & heredum suorum, vel heredum de corpore &c. Et super hoc venit prædictus C. de D. & eripit de domino in eadē curia messuagium prædictum: Habendum & tenendum sibi, &c. ad voluntatem domini secundum consuetudinē manerij, faciend' inde redditus, seruitia, & consuetudines inde prius debitas & consuetas, &c. Et dat domino pro fine, &c. Et fecit domino fidelitatē.

These as I said be called Tenants by Copy of Court roll, because they haue none other euidence to shewe concerning their landes, saue only the copies of the rols of their Lords court.

Neither can these tenaunts sue or be sued for such Landes in the Kinges Court, by writ or otherwise. But if they will in any wise implead or sue others for such copie landes, they must do it by way of plaint in the Lordes Court after this forme.

The forme of the plaint.

A. de B. queritur versus C. de D. de placito terræ, videlicet, de vno messuagio, 40. acris terræ, 4 acris prati, &c. cum pertinētijs, & facit protestationē sequi quærelā istā in natura breuis dñi

Regis

Regis assisæ mortis antecessoris ad cõmunẽ legem Pol'&c. Plegij de prosequẽdo, F.O.&c.

Now although some such tenaunts haue an inheritance according to the custome of that manour, yet in very deede they are but tenaunts at the will of the Lord. For as some men thinke, if the Lord will expell them, and put them forth, they haue no remedie at all, but to sue vnto their Lord by way of petition, desiring him to bee good and gracious Lorde vnto them. For if they might haue any remedie by the Lawe, then should they not be called (say they) tenaunts at the will of the Lord after the custome of the manour. But other men of no lesse learning and prudence, haue beene of contrarie iudgement, as Lord Brian chiefe Iustice, in the time of King Edward the fourth, whose opinion was alwaies that if such a tenaunt by the custome (paying his seruices) bee ejected and put forth by his Lord without cause reasonable, hee may verie well bring and maintaine an action of trespasse against his Lord at the common Lawe, as appeareth termino Hillarij, an. 21. E. 4. Also Lord Danby chiefe Iustice likewise, was of the same iudgement, as appeareth termino Mich. an. 7. E. 4. where hee saith, that the tenant by the Custome, is aswell inheritable to haue his land after the custome, as is hee that hath a freehold at the common Law: but the determination of this question, I remit to my great Maisters, which can loose the knots & ambiguities of the Lawe. Forasmuch as yet still of this matter, Causidici certant & adhuc sub iudice lis est.

Action of Trespasse.

Also yee shall vnderstand, that the vsage of some

some manours is, when the tenaunt will surrender his land to the vse of an other, that hee shall take a wand or a rod in his hand, and deliuer it to the steward of the court, and the steward shal deliuer the same wand in name of seisin, to him that shall take the lande, and such a tenaunt is called tenaunt by the verge. Diuers other customes there bee of surrendring of Copie holde landes, which here for tediousnesse I will omit. And forasmuch as tenaunts by custome of the Manour, haue by the course of the common law no freehold: therefore they be called tenaunts of base tenure. Base terme

Also if such a tenant letteth to farme his copie hold land for longer time then a twelue moneth and a day without the Lordes licence, it is a forfeiture of his land to his Lord.

And knowe ye, that if this tenaunt fell any timber that groweth vpon the Land, but onely for the reparation of the same, this is wast and a forfeiture of his Copie hold.

Hitherto haue I treated of the first member of our diuision, that is to wit, of chattels, for as I saide, all leases for terme of yeares, and at wil, be accounted in the law, but as chattels, and bee compriſed vnder that name, saue that these bee called chattels realls, whereas Kine, Oxen, Horses, money, plate, corne, and such like, bee called chattels personals. Nowe wee will proceed to the explanation of the second member, that is to say, of Free-holdes. Chattell reall and personall.

Free

FReeholdes or franke tenements a man may haue in sundrie wise, for eyther hee is seised for terme of his owne life, or for terme of another mans life. If hee be seised for terme of his owne life, eyther hee hath gotten such estate by way of purchase, or else the Lawe hath intituled him thereunto. I call it by purchase, whether hee commeth vnto it by his owne bargayning & procurement, or by the gift of his friend, and I cal it by the operation of intituling of the Lawe, when a man marrieth a woman that is an inheritrix, & hath issue by her, and the dieth, now shall hee haue the landes during his life, by course of the Lawe, and shall be called tenant by the curtesie of England.

Tenant by the curtesie.

In likewise, if a man be seised in fee simple, or fee tails of landes, and taketh a wife, and he dieth, the law giueth vnto the wife the third part of her husbands lands for terme of life, and she shall be called tenant in dower.

Tenant in dower.

Tenant for terme of life. Chap. 7.

TEnant for terme of life, is he that holdeth lands or tenements for terme of his owne life, or for terme of an others life. Howbeit the most frequent and common manner of speaking is, to call him that hath an estate for terme of his owne life, tenant for life, and him that hath an estate for terme of an others life, tenant for terme dauter vie, that is to say, tenant for terme of an others life.

Ye shall note, that like as he that maketh the lease is called the lessour, and he to whom the lease

leasse is made: is called the lesse, so he that maketh a feoffement, is called the feoffor, and he to whom the feoffement is made, the feoffe.

Also if the tenant for terme of life, or tenant for terme of an other mans life, doe waste, the lessor, or he in the reuersion, shal maintaine very well an action of waste against him, and shal by the same recouer treble damages.

Finally, ye shall vnderstand, that by an act of Parliament made in the xvii. yeare of our Soueraigne Lorde King Henry the eight, it is enacted, that no free-hold, nor estate of inheritance, shall passe nor take effect by reason of any bargaine and sale, except that same bee made by writting, indented, sealed, and enrolled in one of the Kinges Maiesties Courtes at Westminster, or else within the countie where the land doth lie, before the Custos Rotulorū, and two Iustices of Peace, and the Clerke of the Peace of the same Countie, or two of them at least, of which the said Clerke shall be one, & that such enrolment be made, within fiue moneths after the date of such writing. And for the inrolment of euery such writing where the land compriled therein, is not aboue the yearely value of fortie shillings, they shall take two shillings, that is, twelue pence to the Iustices, and twelue pence to the Clerke. And if the land be aboue the yearely value of xl. s. then they shal take v. s. that is, ii. s. and vi. d. to the Iustices, and iii. s. vi. d. to the Clerke, which shall inroll and ingrosse sufficiently in Parchment such deedes and writings, and at euery yeares end he shall deliuer the same to the costos Rotulorum

Waste.

Rotulorum of the ſame county, to remain in his cuſtodie among other records of the ſame countie, ſo that the parties reſorting thither may ſee them. Prouided, that this extend not to any tenements or hereditaments lying within any citie or towne corporate, wherein the Maiors, Recorders, or other officers haue authoritie, or haue lawfully vſed to enroll any euidences or writings within their precinct.

Tenant by the curteſie. Chap. 8.

TEnant by the curteſie of England, is hee that hath maried a wife inheritid, & hath had iſſue by her, & ſhee is dead, in this caſe the Lawe of England permitteth and ſuffereth the husband of ſuch wife, to receiue & keepe vtill all his wiues land, that ſhe had either in fee ſimple or fee taile, ſo long as he liueth. And this is by the curteſie, & vſbanitie of England, for this thing is vſed in none other countrie nor region. But in this, it is required that the childe be vitall, that is to ſay, be borne and brought forth into this world aliue, and therefore the common ſaying is, and hath beene, that vnleſſe the childe be heard cry, the father ſhall not be tenaunt by the curteſie, for the onely proofe and argument of life in an infant borne, is the vagite and crying. Yee ſhall furthermore vnderſtand, that vnleſſe the husband bee in actuall & reall poſſeſſion of his wiues landes, and ſeiſed of them in her right, hee ſhall not be tenant by the curteſie after her death. And therefore if landes diſcend to a mans wife, ſo that ſhe is tenant in the law, & to euery mans actions, yet if the husband haue

not

not made an actuall entrie during coverture and matrimonie betweene them, he ſhall not be tenant by the curteſie, for it ſhall bee reputed and iudged his folly and negligence that hee would not enter in her life time.

Otherwiſe it is of aduowſons, rents, commons, and ſuch other things, which forthwith when they diſcend, bee in man, or in a woman, without any entrie or further ceremony of law.

Note, that if tenant by the curteſie of England, will ſuffer, or make any waſt in the Lands or tenements that hee ſo holdeth, hee is puniſhable therefore, by action of waſt brought by him in the reuerſion.

Alſo it is to be knowen, that of things that be in ſuſpence, a man ſhall not be tenant by the curteſie, and therefore if a man be tenant in fee-ſimple of certaine land, & doth intermarie with a woman that is the Seignioreſſe or Lady of the ſame, and hath iſſue by her, and ſhe dieth, yet ſhal he not be tenant by the curteſie of the Lordſhip or Seigniory, becauſe himſelfe is tenant of the land, & therefore the Lordſhip is ſuſpended for the time, for a man cannot be both Lord & tenant of one thing: but if he had not beene tenant of lands, hee ſhould haue had the Lordſhip after the death of his wife, by the curteſie of England very well.

Alſo note, that of a right, onely a man ſhall not be tenant by the curteſie, as if a woman ſole ſeiſed in fee of lands or tenements, be diſſeiſed, and after take a huſband, and they haue iſſue, and ſhe die before any reentrie made, the huſband ſhall not be tenant by the curteſie.

Note

Note further, that of a reuersion, a man shall not be tenant by the curtesie: as if a woman sole seised of lād in fee, make a lease to S. for terme of life, after taketh a husband, & they haue issue, and she die, liuing the lessee for terme of life, the husband shall not be tenant by the curtesie.

Of Tenant in Dower. Chap. 9.

TEnant in Dower, is shee that hath been married to an husband that was during the matrimonie betweene them, seised of landes or tenements in fee-simple, or fee-taile, which is now dead, & she seised of the third part of her husbands said lands for terme of her life.

Dower at the common lawe.

For by the common Law of the land, if the husband be at any time during the couerture seised lawfully, whether it be by purchase, or by discēt, either in fee, or in fee taile, & die, his wife shal be indowed by the course of the cōmon Law of the third foote.

Dower by custome.

And in some places by an ancient custome, she shall be indowed of the moitie, yea and though the husband were neuer seised actually during the couerture. Yet if the landes be cast vpō him by the law, so that the law calleth him tenant to euery mans action, it suffiseth the woman to demand her dower: for it were vnreasonable that the negligēce & slacknesse of entring of the husbād, should hurt the wiues title.

Tenant by the curtesie.

Otherwise it is, as it is said before of tenant by the curtesie, for if landes discend to a woman couert, and the husband for slouthfulnesse or negligēce doth not enter in his wiues life, he shal not be tenant by the curtesie, for by al laws the wife owth obedience and subiection to her husband

husband, and therefore she cannot compel him to enter, but when lands discend to the wife, the husband onely hath power to enter at his pleasure.

And ye shall understand, that vnlesse the wife be about the age of nine yeres at the time of her husbands death, she shall not be endowed by the common Law.

But it is to be knowen, that a woman may by diuers waies estoppe and preiudice her selfe of her dower: as if she commit any crime, for which she is attainted of treason, murder, or felonie, shee shall haue in this case no dower, notwithstanding she hath obtained her pardon. A woman shall haue no dower

Also, if after the death of her husband she taketh a lease for terme of life, of the same landes whereof she is indowable, she loseth her dower of the same. Moreouer, if she depart from her husband, and lyeth in adulterie with an other man, and is not reconciled againe to her husband without coertion of the Ecclesiasticall power, shee loseth her dower after her husbands death. She shall be also barred of her dower, if shee will withhold from the heire, the charters and euidence, concerning that land whereof she asketh dower. But none other saue the heire, can withhold her dower for this cause. No dower.

It ought not to be vnknowen also, of what things shee may demaund dower, and of what things not. Of landes, messuages, aduowsons, rent charge, rent seruices, or seignories in grosse, or otherwise, of villaines, of commons certaine, of estouers certaine, of milles, & offices, or of the profit of them, she is dowable. But of commons

and estouers sans number, also of annuities, of homages, of things of pleasure, as of seruice, of paiment of roses, and semblable, she shal not be endowed.

Dowment ex assensu patris.

There be yet two other kinds of dower, the one is called dowment ex assensu patris, that is to say, by the assent of the father, and the other is called dowment de la plus beale part, that is to say, of the fayrest part.

Dowment ex assensu patris, is whē the father is seised of lands in fee simple, & his son which is heir apparāt, indoweth his wife at the Church dore, whē he is espoused of parcel of his fathers lands, with the assent of his father in writing, testifying the same assent, if in this case her husband die, she may forthwith enter into the land so assigned vnto her, without further procurement of processe of law, although the father of her said husband be yet aliue, & in actuall possession of the land. But if she thus do, and take her to this indowment at the Church dore, she cannot haue her dower. Also by the Common law, of the third part of al her husbands lands, or any part or parcell of them, how be it, if shee wil refuse this assigment made vnto her at the church dore, & demaund dower at the common law, she may so do very wel. A man may also indow his wife at the time of the espousals, of his owne lands, the which he hath by his own possession, and that dower is called dower ad ostium Ecclesiæ, that is to say, at the church dore.

Dowment ad ostiū ecclesiæ.

Dowment de la plus beale part.

Dowment de la plus beale part, that is to say, dowment of the fairest part shal be in this case, when a man is seised of lands which he holdeth

of another man by knights ſeruice, & of other lands which be of ſocage tenure, & hath iſſue, which is within the age of xiiii. yeares, and die, and the Lord of whom the lands is holden by Knights ſeruice, entreth in the land holden of him, and the mother of the childe entreth into ſocage tenure, as gardaine in ſocage, if in this caſe the woman will bring a writ of dower againſt the Lord which is gardian in chiualry, he may plead the ſpeciall matter, and ſhew how ſhe is gardaine in ſocage, & hath ſo much land, and thereupon pray the Court that ſhe may be ſuffered to endow her ſelfe of ſo much land, being in her owne cuſtodie, as amounteth to the third part of the whole lands.

And then the iudgement ſhal be, that the gardeine in chiualrie ſhall retaine the land holden of him quite from the woman, during the nonage of the ward. After which iudgement and ſentence giuen ſhe may goe, & in the preſence of her neighbours, endow her ſelf of the beſt part of that which is in her cuſtodie, amounting to the third part of the whole, and then is ſhe called tenant in dower de la plus beale.

Finally ye ſhal vnderſtand, that by a Statute made in the 27. yeare of our moſt dread ſouereigne Lord, king Henry the eight, it is enacted, that where diuers perſons haue eſtates made to them and to their wiues, and to the heires of the husband, or to the husband and wife, and the heires of their two bodies begotten, or the heires of one of their bodies, or for terme of both or one of their liues, or any other perſons and their heires, to the vſe of

An. 27. H. 8.

the husband & wife, or to the wife alone for her ioynture: in euery such case the woman shal not be suffered to demaund any dowrie of the residue of her husbands landes of whom shee hath ioynture, against any tenant of the land. But in case shee hath no such ioynter, then may she demaund her dowrie after the course of the common law. Prouided neuertheless, that if such women be lawfully expulsed from their iointer, or any part therof, without fraud or couin, then shall they bee endowed of the residue of their husbands lands, for as much as the lands shall amount vnto, out of which they were so expulsed and put forth.

Prouided also, that if lands or tenements be assured to any woman after mariage for terme of life, or likewise in ioynture (except it bee by act of Parliament) & the wife ouerliue her husband, in whose time the ioinsture was made, in this case the wife may refuse the lands so appointed vnto her in ioinsture, & haue her dower at the cõmon law, of such lands as her husband was seised of, at any time during the coverture.

Also, if the husband committeth treason, murder, or felony, for which he is attainted, the wife shall not haue her dower.

And note, that if the husband enter into religion, and is professed, the heire shall enter into the land, but the wife getteth no dower till the husband dieth, M. 32. E. 2.

And likewise, if a man seised of land taketh a wife that is an alien borne, and dieth, she shal not be endowed, except she be made denizin by act of parliament. T. 3. H. 6. And note, that wher the

the wife bringeth a writ of dower, & recouereth her right, shee shall recouer no damages, but where her husband died seised of the landes recouered.

A deuision of inheritance. Chap. 10. Damages.

HEtherto haue I spoken of freeholds, now it remaineth to treat of inheritances, not the inheritaunces that be no free holdes, for they be freeholds also, but the other estates of which I haue hetherto treated, be only freeholdes and of no higher nature, whereas an estate of inheritance, although it be a free-holde indeede, yet it is not to be called by name, sith it is after more excellent & greater estate. But ye shall vnderstand, that of inheritances some be of more amplitude & excellent then other some be, as that inheritance which is pure simple, and without limitation of what heirs, which kinde of inheritance is called fee simple. But when I make a limitation of what heires, then it is called fee tayle, and of which also be two sorts, as hereafter more at large shall be declared. Now therefore the nature of fee simple is set forth with our accustomed compendiousnesse.

Of fee simple. Chap. 11.

FEe simple is (as I saide) the most ample and large inheritaunce, that can be in this realme deuised or inuented, it is that which a man hath to him and his heires, simple without any further limitation, for whether they be of his owne body begotten or not, so that they be the next of his kinne, and within the degrees it sufficeth. Fee simple.

So then tenent in fee simple is hee that hath landes or tenements, whether it be by purchase or by discent, to him & to his heires & assignes for euer. For if a man wil purchase lande in fee simple, he must needs haue these wordes his heires in his purchase, for these be the onely words that make the estate of inheritance. Therfore if lande be giuen to a man for euer, & no mention be made of his heires: he hath an estate but for terme of his life, because these wordes his heires, do lacke.

Yet neuertheless, if a man by his testament doth deuise landes to an other in such place or case where the custome or law will serue so to do, though he maketh no mention of heires, but saith that he bequeth to such a person such lands to haue and to holde to him and to his assignes for euermore, here an estate of inheritance doth passe, for in testements the wil and intent of the testator is to be pondered, and not the formall and prescript wordes of the law.

Also these terms in the law, frank mariage, & frãk almoign, that is to say, free mariage & free almes, do include in the wordes of inheritance.

And therefore if I giue lands to a man with my daughter in franke mariage without further addition or mention of heires, this is an estate of inheritance, as shall be hereafter declared more plenciously. So likewise it is of landes giuen to an house Ecclesiasticall in pure and franke almes. Moreouer, if land be giuen to a man and to his blood, or vnto him and to his seede, he hath in both cases an estate of inheritance, for in the last he hath a fee taille, & in the other a fee simple. For this word seede, & blood,

and

and such like, doe imply words of inheritance.

Also if landes bee giuen to a man and to his heires males, or females, hee hath by this gift a fee simple, because it is not expressed of what bodie the issue shall come.

But now it is to be seene who be said a mans heires in the lawe ye shal therfore know, that my brother or sister by the halfe blood, that is to wit by the fathers side, & not by the mothers, or contrariwise by the mothers side, and not by the fathers, shall neuer be mine heire, nor none that come of them. Neither my bastard can be mine heire, nor mine own natural father nor mother, nor grandfather, nor grandmother can be mine heire. For it is a principle & ground of the lawe, that inheritance may lineally discend, but ascend it may not. And therfore if I haue landes in fee simple, and die without issue of my body, my father cannot be mine heire, but my fathers brother or sister shall, and then if my vncle or aunt die seised without issue, my father shall haue the lands as heire to mine vncle, & not as heire to me, for that cannot be. But true it may go from me to mine vncle or aunt well enough, for that is not called a lineal ascention, but a collateral discent.

The halfe blood.

A Bastard shal be no heire.

A ground of the law.

Also ye shall vnderstand, that a lineall discent is, when the discent is conueyed in the same line of the whole blood, as grandfather, father, and sonne, and so downe. And collateral discent is of an other branch, from about of the whole blood, as the grandfathers brother, or fathers brother, and so discending.

Lineall and collateral discent.

And ye shal note, that by the common law of this Realme, the eldest sonne shall haue the whole inhe-

inheritance, and after him if he haue no issue, the second sonne, & so forth. And if I haue no sons but daughters, then shall all the daughters together inherit, which be called coparceners, but if I haue no issue at all, neither sons, ne daughters, then shall my eldest brother in heritage succeede me, But if I haue no brother, then my sisters if I haue any, if not, my uncle by my fathers side, if the lands be of mine own purchase, or if they discended vnto me from my father. And to be short, if there be none in life of my fathers side, the purchased land shall goe to my mothers side, & if there can be found no heire, neither by my fathers side, nor yet by my mothers, then shall it eschear, as they call it, to the Lord of who it was holden, for euery land must needs be holden of some Lorde, as shall be hereafter shewed. But if landes discend vnto mee by my mothers side, then if I faile of issue, the lands shal discend only to my heires of my mothers side, and neuer to mine heirs of my fathers side: as on the contrarie side, if I haue lands, or any tenements by discent from my father, or his blood, they shall neuer discend to my heires by my mothers side.

Coparteners.

Eschear.

Diuersitie.

And thus ye see a great difference in this behalfe, betweene purchased landes, and landes which discend from an auncestour.

If there be three sons, and the middle sonne purchase landes and die without issue, the eldest shall haue the lands, and not the yongest.

A ground of the law.

Also it is a principle in our lawe, that none can be mine heire of Lands that I holde in fee simple, vnlesse he be mine heire by the whole blood, that is to say, both by father and mother, for

for if a man hath iſſue, two or three ſons by ſundry wiues, and the eldeſt purchaſeth landes in fee & dyeth without iſſue, his halfe brethren, I meane thoſe that be not his brethren both by the fathers ſide, and mothers ſide, ſhal not haue the land, but it ſhall goe to his vncle. Likewiſe if a man hath by his firſt wife a ſonne & a daughter, and by his ſecond wife an other ſonne, and the ſonne by the firſt wife purchaſeth landes in fee ſimple, & dieth without iſſue, the ſiſter germaine, that is to ſay, both by fathers ſide and mothers, ſhal haue the lands by diſcent as heir to her brother, & not the younger brother, foraſmuch as the younger brother cānot in this caſe be heire of his elder brether, becauſe he is no brother germein vnto him. Otherwiſe it is of lāds or other hereditaments intailed, as ſhalbe hereafter ſpecified.

Alſo if a man be ſeiſed of lands in fee ſimple, and hath iſſue a ſonne & a daughter by one wife, and after the death of his firſt wife, a ſonne by an other wife, and dieth, and the eldeſt ſon entreth into the lands, and after he dieth without lawfull iſſue of his body, the daughter ſhal haue the lands, and not the yongeſt ſonne, and yet the youngeſt ſonne is heire to his father, but heeis not ſo vnto his brother. But if in this caſe the eldeſt ſonne hath not entred after the death of his father, but had dyed before any entrie made by him, then ſhall not the ſiſter germaine enter, but the younger brother is heire to his father, becauſe the eldeſt brother was neuer in actuall poſſeſſion, which is requiſite to the perſon that claimeth to be heire collaterally.

But to the lineall heires, it ſuffiſeth that the ance-

auncestour should haue beene heire, if he had liued, I meane as thus. A man seised of landes and hath issue a sonne and a daughter by one wife, and afterward a sonne by an other, he dyeth, and after his death the eldest sonne entreth not, but dyeth without issue before her can make actuall entrie, heere in this case his sister shall not haue the landes as heire to her brother, because her brother was not in actuall possession, but the younger brother shal haue them, as heire to his father, yet if the eldest sonne in that case had left behind him issue of his body, whether it had beene sonne or daughter, this issue notwithstanding that the Father of the issue was neuer possessed either actually or in the law, shall haue the landes, & shall conuey his discent from his father, the cause hereof is this, that the sonne or daughter is lineall heire, where as the brother, sister, vncle, aunt, &c. be heires collaterall, and so ye shall obserue a diuersitie.

Diuersitie.

I call an actuall possession, when a man entreth indeed into lands, which be to him discended, but a possession in law is called when lands be discended to a person, & he hath not yet really & actually entred into them. For notwithstanding that he is not in actuall possession, yet he is possessed in the lawe, that is to say, in the eye and consideration of the law he is deemed to be possessed, forasmuch as he is tenant for euery mans action that will sue for the said landes, or else assuredly there should ensue an intollerable inconuenience, as we shal more copiously open in another place. We shal furthermore vnderstand, that this word inheritance, is not only to be accommodate

Hæreditas quid sit.

modate and applyed to that which commeth by discent or succession from a mans auncestors or predecessors, but also to euery purchase in fee simple or fee tayle.

And note, that a man can haue no larger or greater estate then fee simple.

Of Fee tayle. Chap. 12.

YE shall vnderstand, that before a certaine statute called the statute of Westm. second there was no estate tayle, but all was fee simple, either purely, that is to say without condition, or at the least way conditionally, as appeareth by the presence of the said estatute, but now sithence the promulgating of the estatute, diuers formes of estates tayle haue risen. Westminst. 2. Chap. 1. Deuision.

Fee taile is, when it is prescribed and limited in the gift, what sort of heires, and by whom engendred, shall inherite.

As for example, I giue lands to a man and to his heires, & goe no further, this is a fee simple: but if I make a limitation, and adde of his body begotten, now it is a fee taile, that is to say, a fee or inheritance limited, prescribed, determinate or assigned.

So that if I giue lands to a man and to his heires, he hath fee simple, but if I giue landes to him & to his heires of his body lawfully begotten, he hath but a fee tayle, forasmuch as I appoint, limit, prescribe, and expresse what heirs they shalbe, & for lacke of such heires the gift shal be expired and worne out, and the landes shalbe reuerted againe to the giuer or his heires.

But ye must obserue and note, that there be two kindes of fee tayle. There is a generall

tayle,

tayle, and there is a speciall tayle.

Fee tayle generall is, where lands be giuen to a man and to his heires of his body begotten, without any mentioning & expressing by what woman they are begotten.

Generall taile

And therefore if a man be tenant in the generall taile of lands, & taketh a wife and hath issue by her, and she dieth, and afterward hee taketh another wife, of whom hee hath also other issue by her, either of these issues is inheritable to this land intailed. But if I expresse in the gift by what woman the heires shall be procreated & ingendred, then it is an especiall taile, as for example to make the thing plaine, if lands be giuē to a man and to his heires of his body lawfully begotten by Margaret his wife, this is an especiall taile, for the issue of him begotten by another woman, shall neuer inherite by force & vertue of the taile. Likewise it is, if lands be giuen to a woman & to the heirs of her body lawfully begotten (& shew not by what man) this is a generall taile, but if I go forward & say by such a man her husband, then it is an especiall taile.

Especiall taile.

Also if I giue landes to a man & to his wife, and to the heires of their two bodies lawfully begotten: this is an especiall taile, aswell in the husband as in the wife.

Franke mariage.

Semblable it is, if a man giueth landes to another man with his daughter, or kinswoman in franke mariage, this word (franke mariage) implieth an estate taile especial, and in this case as well the man as the woman hath an estate in the speciall tayle.

But if I giue landes to a man and to such a

woman

woman, & to his heirs that he hath begot of hir, here the woman hath an estate but for terme of her life, & the husband an estate in the especial taile. And likewise it is in the womans behalfe, as if I giue lands to a man and to his wife, & to her heires of her body by her said husband engendred, he hath an estate but for terme of life, & she an estate in the special taile. But in both cases, if I had said to the heirs, & not to his or her heirs, then should either of the haue had an estate in the special taile, because this word heirs is as well referred to the one as to the other.

Ye shall also vnderstand, that if lands be giuen to a man, and to the heirs males of his bodie, this is an estate taile, and in this case, the heire female shall neuer inherite. Discent by heire males

Also, if a man hath issue & dieth, and landes be giuen to him and to his heires of his bodie begotten, this is a good estate tayle, although the Father were dead at the time of the gift. Finally it is to be noted, that of lands which a man hath in fee simple, the possession of the brother, shall cause the sister germaine, that is to say, the sister both by the Fathers side and mothers to inherite, & in this case the brother by the halfe blood shall not inherite, as heretofore was said, but of lands which be intailes otherwise it is. Therefore if a man be seised of lands in the generall tayle, and hath issue by his first wife a sonne and a daughter, and also a sonne afterward by another wife, and dieth, and the eldest sonne entereth into the lands, and after dieth, the sister germaine to the eldest son shal not haue the lands, but the younger brother of the

the halfe blood, because whosoeuer shall inherite land or any other hereditaments in tayle, must clayme them as next and immediate heire not to him that dieth last seised of the lands, but to him to whom the lands were first giuen, vnto whom in the case before remembred, is the sonne and heire, and not the daughter.

Diuersitie. Thus yee shall marke a great diuersitie betweene the forme of succession in the landes of fee simple, and the forme in fee tayle.

Tenant after possibilitie of issue extinct. Chap. 13.

When lands, tenements, or other hereditaments, be giuen to a man and to his wife, and to the heires of their two bodies lawfully begotten, if in this case either of them chaunce to die before they haue issue between them, he or she that ouerliueth, is stil tenant in taile, but without possibility of any issue that can be heire to these landes or hereditaments thus intailed, for this cause he or she thus ouerliuing, is called tenãt in taile after possibily of issue extinct, for in such a tenant is al possibility of issue that may be inheritable to these lads by force of the gift in tail vtterly extinct or quenched, & by his or her death the estate tail shal expire, cease, & be aboli hed for euer, & shall reuert & turne againe to the giuer or donour from whence it came.

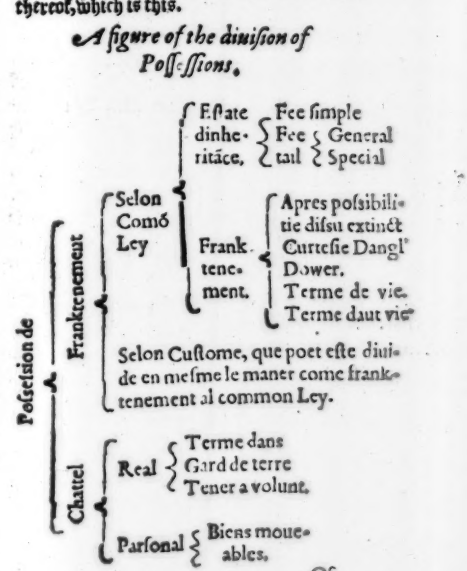
Disputishable of waste.

Yet forasmuch as the tenant after possibilitie of issue, had once an inheritance in him, hee shall not bee punished by an action of Waste, though he maketh neuer so much Waste in the lands and tenements, whereof yet in effect he is but a tenant for terme of life. But if this tenant

nant doth alien in fee, such lands, he in the reuersion may enter for the forfeiture. Forfaiture.

And this for estates at this present time shal suffice. But to the intent that yee may the more easilie comprehend all the members of the diuision of possessions and estates which men may haue in lands, tenements, and other hereditaments, it shall not be euil done to set foorth as it were in a table before your eyes the deuision thereof, which is this.

A figure of the diuision of Possessions.



Of

HAtherunto I haue made a compendious and short declaration of estates of all sortes. But where I said, that among sisters there is no prerogatiue or preheminence concerning the inheriting of their auncestours lands, but that they shall be altogether inheritours, and make as it were but one heire, it is expedient to make a further declaration and procesle in this behalfe, and to shew how and in what maner this partition shall be made.

Diuision of Parceners at the Common law, and parceners by custome.

But ye shall vnderstand, that there bee besides Parceners at the Common law, which be onely sisters, also Parceners by custome which is amongst brothers cõtrary to the course of the Common law, & this custome is in some places of Kent, & in other places where landes and tenements be of the tenure of Gauelkind.

Ye shal therefore know, that when a man is seised of land in fee simple, or fee taile, & hath no issue but daughters, & die, & the daughters doe enter into the lands thus discended vnto them, now they be called parceners or coheires, & by a writ called De Partitione facienda, brought by one of them against the others, they shal be constrained by the law to suffer an egall partition to be made of the landes betweene them.

Writ De Partitione faciendo.

Now partition may be made in sundry wates. One way is, when they themselues doe make partition betweene them of the whole heritage, and do agree vnto the same, and do enter euery one into her part so allotted vnto her.

Partition in diuers maners.

An other way is, when by all their agreements & consent, one commõ friend doth make the

the partition, In which case the eldest sister shal haue the first election, & after her the second sister, & so forth. But if they agree that the eldest sister shall make the partition, & shee maketh it, thē the eldest shall not chuse first, but shall suffer all her sisters to chuse before her, as it is thought.

There is also an other forme of partition, which is egally to deuide the landes into so many parts as there be coheires or parceners, & to write euery part so deuided in a seuerall scroule of paper, & so put the said scroules in a bonet, or to inclose them seuerally in balls of wax, & then the eldest sister to chuse which ball she will, or to put her hand into the bonnet, & to take a scroule, and to hold her to her chaunce & allotment, and so consequently euery sister after other.

And yet shall note, that partition by agreement, may aswell be made by nude & bare words without writing, as by writing. Nota.

And if any of the parceners will not suffer any partition to be made, then may the other that would haue partition, purchase a writ called De Partitione facienda, against them that refuse partition, to compell the same to suffer partition to be made accordingly, and then by the iudgement of the Court, the Shirife by the ſerement & oath of twelue men, shall make partition betweene them, and shall assigne to each sister her portion, as he shall thinke good, without giuing any election of choise to the eldest. A writ de Partitione, facienda.

And if two Manours or meales happen to discend to two sisters, and the manors be not of egall value, then may she, to whom the lesse manour or meale is allotted, haue assigned vnto

her a rent proporcionably out of the other manour, for the which rent she and her heires may distraine of common right, though they haue no writing thereof.

Distresse of cõmon right.

Finally, ye shall vnderstand, that if a man be seised of landes in fee simple, and hath issue two daughters, & giueth with one of his daughters to an other man that shall marry her, the third or fourth part of his land in frank mariage, and dyeth, if in this case the daughter that is in this wise bestowed & aduanced, will haue her portion of her fathers heritage, shee must put her land giuen vnto her in frank mariage in Hochpot new againe. I meane she must be contented to suffer her saide landes to be commixed & mingled with the other lãds of which her father died seised in fee simple, so that an equal diuision may be made of the whole, or elle she shall haue no part of those lands of which her father died seised. But if her father had made vnto her a common gift in talle, or feoffement in fee, she should not nede to put her lands in Hochpot, but may very well keepe & retaine them still, & also haue as good part of the rest of the lãds of which her father died seised, as her other sister or sisters haue.

Hochpot.

For a gift in franke mariage, is accompted the most free and most liberall gift that can be, and that gift which the lawe iudgeth to be onely for the aduancemẽt and bestowing of the daughter, where as feoffements in fee simple, and also common gifts in tayle bee accustomably for other causes, & for the aduantage rather of the giuer, or feoffour, then of the taker.

Frank mariage

Also if parceners make partition of landes

being

being within age, that partition is voide.

And if parceners in fee simple make partition, and the part of the one is better then the other, being of ful age of xxi. yeares, then the partition is good and cannot bee defeated, but if it be of lands in fee tayle, the one part being better then the other, that partitio may be defeated by their heires.

Of Ioyntenants. Chap. 15.

HEtherunto verily have we spoken of Coheires, called Parceners of the common Lawe, which as is heretofore declared, doe come to landes and other hereditaments ioyntly by the course, operation and acte of the Law. Now shall we speake somewhat of them which either ioyntly or severally come to landes, tenements, or other hereditaments by their own purchase, acte, procurement and working. And of these, they that come to them by ioynt title, way or colour, be called Ioyntenants, but they that come by severall tytles, waies, or colours, to landes or tenements bee named tenaunts in common.

Tenants in common.

So then, if a man being seised of landes or tenements, or other hereditaments, shall thereof enfeoffe two, three, foure, or more, to have & to hold to them in fee simple, fee tayle, or for terme of their lives, or for terme of an others life, these persons so enfeoffed and seised, bee called Ioyntenaunts. Also if two or moe doe expell and disseise an other man of any Landes or tenements to their owne behoove and use, these Disseisours and wrong doers are nowe

become ioyntenants, because by their owne Act they come ioyntly to this land. But if they doe disseise an other man to the vse onely of one of them, in this case they be not ioyntenants, but he to whose vse the disseisin is made, is tenant alone of the same, and the others haue nothing in the tenancy, but be called aydours or coabitors to the disseisin.

Disseisin.

And yee shall vnderstand, that a disseisin is properly, where a man entereth into any lands or tenements there whē his entrie is not lawfull, and putteth out him which hath the freehold of the same.

Suruiuour taketh place.

And ye shall furthermore know, that the nature of ioyntenancie is, that he which suruiueth & ouerliueth the other, shal haue to himself alone the whole and entire tenancie, according to that estate which he should haue had if the ioynture had beene continued: as for example, three iointenants be of lands in fee simple, & the one half hath issue & die, in this case the two which do ouerliue their fellow, shall haue the whole landes betweene thē, & the issue of him that is departed getteth nothing. And if the second iountenant hath also issue & die, the third which hath ouerliued them both, shall now haue and enioy the whole, to him and to his heires for euermore.

Diuersitie,

But otherwise it is of coheires which in our law is called parceners. For if there be three such coheires & parceners, and before any partitiō made, the one haue issue a sonne or a daughter & dyeth, her portion shall discend and fall to his child, and shal not runne amongst the other ioynt heires or coparceners. Howbeit, if such

parce-

parcener or coheire had died without issue, then should his portiō haue discended to his coheirs. But how? not by force of Survivour or overliuing, which in latine is called Ius accrescendi, but by very discent, for where any of the coheirs die without issue, who can be heire to him or her so dying, but the other coheires to him or her so dying, or the rest of the coheires if there be many?

And like as this right of survivor or overliuing, holdeth place amongst ioyntenants of landes and tenements, so in like manner it holdeth place amongst them which haue ioint estate or possession with others of chattels, whether they be reall or personall. As (for example) if a lease of landes or tenements be made to many for terme of certaine yeares, the overliuer or overliuers, shall haue the whole during the terme by force of the same lease. So of chattels personall, if an horse, oxe, grain, or other such personall chattell be giuen to many, the which overliueth shall haue the same alone. In semblable wise, it is of debts and duties. For if an obligation be made to many for one debt, or some other conenants or contracts, the law is likewise so. Ioyntenants of reall and personall goods.

Also some ioyntenaunts may be which may haue ioynt estate and be ioyntenants for terme of their liues, & yet haue seuerall inheritances. As where landes be giuen to two men and to the heires of their two bodies engendred, in this case, these two persons haue ioynt estate for terme of their two liues. And yet they haue seuerall inheritance. For if the one haue issue and dye, the other to it surviueth shall haue all by force of the survivour for terme of his life. Ioyntenants of seuerall inheritances.

And if he that ſurviueth hath alſo iſſue and die, then the iſſue of the one ſhal haue the halfe of the lands, & the iſſue of the other ſhal haue the other halfe, & they ſhall holde the land betweene them in cõmon, & ſhall not be iointenants, but tenants in common, and the cauſe & reaſon why ſuch donees in ſuch caſes haue a ioynt eſtate for terme of their liues, is for that at the beginning the lands were giuē to the two: which words without more ſaying, make a ioynt eſtate to them for terme of their liues, for if a man will let land to another by deede, or without deede, not making mention what eſtate he hath, & of this maketh liuery of ſeiſin, in this caſe the leſſee ſhall haue an eſtate for terme of his life. And if he haue no liuery of ſeiſin, he is tenant at will. And ſo forasmuch as the lands were giuen vnto them, they haue a ioynt eſtate for terme of their liues. But the cauſe why they haue ſeuerall inheritance, is this, for that they cannot by poſſibilitie haue an heire betweene thē engendred, as a mā & womā may haue, wherfore the law will that their eſtate & their inheritance ſhalbe ſuch as reaſon will after the forme and effect of the words of the gift, and that is to the heires, that the one engendred of his body, by and of his wiues, & to the heires that the other engendreth of his body by any of his wiues. So it behoueth by neceſſitie of reaſon, that they haue ſeuerall inheritances. And in ſuch caſe if the iſſue of one of them after the death of them both doth die, ſo that he hath no iſſue aliue of his body ingendred, then the donor which gaue the land, or his heires, may enter in the halfe as in his reuerſion though the other hath

Tenants in common.

hath issue alive. And the cause is, that forasmuch as the inheritances be seuerall, therefore the reuersion in the lawe is seuered, & the suruiuour of the issue of the other shall hold no place to haue the whole. And as it is said of males, in the same maner it is wher lands be giuen to two females and to the heires of their two bodies begotten.

Suruiuour holdeth no place.

Also if landes be giuen to two, & to the heires of one of them, this is a good ioyntenancy, and the one hath a freehold, and the other hath a fee simple, and if hee which hath fee simple die, hee that hath the freehold shal haue the whole by the suruiuour for terme of his life.

And if these two ioyntenants ioyne in a gift in the taile to a stranger, reseruing a rent to him that hath an estate but for his life, this reseruation is voide to make a tenure. Likewise it is where tenements be giuen to two, & the heires of the body of one of them engendred, the one hath a freehold, and the other fee taile.

Note, if two ioyntenants be seised of an estate of fee simple, and the one granteth a rent charge by his deed to an other, out of that which to him belongeth, in this case during the life of the grauntour, the rent charge is good and effectuall, but after his decease the rent charge is void, as to charge the lands, for he that hath the land by the suruiuour, shall hold all the land discharged, the cause is, for that he that suruiueth claimeth to haue the land by the suruiuour, and not by diuent of his fellow. But otherwise it is of parceners or coheires, for if there be two parceners in fee simple, before any partition be made, the one chargeth that, that to him be-

Rent charge graunted by a Ioyntenant.

Diuersitie.

longeth by his deede of a rent charge, and dieth without issue, here that which to him belongeth discendeth to the other parcener, & in this case the other parcener shall hold the land charged, because he commeth to the halfe by discent as heire. Also if there bee two iointenants in fee simple, within one borough where the lands & tenements within the same borough be deuisable by testamēt, if the one of the said iointenants deuise that which to him belongeth by testament, & die, this deuise & legation is void. And the cause is for that, that no deuise may take effect til after the death of the testator which bequeathed & deuised the same, & by his death all the land incontinent cōmeth by the law to his fellow that suruiueth by the suruiuor, which neither claimeth nor hath any thing in the land by the deuise, but in his own right by the suruiuor after the course of the law, & for this cause such a diuise is voyd.

Diuise by testament.

But otherwise it is of Parceners seised of tenements deuisable in such case of deuise for the cause aboue remembred. And it is commonly said, that euery iointenant is seised of the land that he holdeth iointly per my & per tout, that is, throughout and by all. And this is as much to say, that he is seised by euery parcell & by all, which saying is true, for in euery parcell and part, and throughout all the landes and tenements he is ioyntly seised with his fellow. And therefore if the one iointenaunt make a feoffement to his companion, that is voyd, because he can make no liuery of seisin to him. Also if 2. iointenāts be seised of certaine lands in fee simple, and thone letteth that, that to him be-on-

A ground of the law.

Diuersitie.

belongeth, to a stranger for terme of yl. yeares and dieth within the terme, in this case after his death the lessee may enter and occupy the halfe to him letten during the said terme, though the lessee neuer had possession of it in the life of the lessour by force of the lease. And the difference betweene the case of the grant of a rent charge and this case is this, that in the grant of rent charge by a iointenant, the lands or tenements abide alway as they were afore, without that, that any hath right to haue parcell of the tenements but themselues, & the tenemants abide in such pittie as they were before the charge. But where a lease is made by a iointenant to another for terme of years, incontinent by force of the lease, the lessee hath right in the same land, that is to say, of all that, that to his lessour belongeth by force of the same lease during his terme. And if the lessor in this case die, the other iointenant shall haue the rent or terme during the said terme, because the reuersion is come to him by survivour. Finally, if a joynt estate be made of land to the husband & wife, and to the third person, in this case the husband & the wife haue not in the law in their right but the halfe, & the third person shal haue as much as the husband and the wife haue, that is to say, the other halfe; And the cause is, for that the husband & wife be but as one person in the eye of the law. And it is here in like case as if an estate be made to two iointenants, where the one hath by force of the iointure the one half, & the other the other halfe. In semblable wise it is where an estate is made to the husband and wife, and to other two

Diuersitie betweene a grant of a rent and lease.

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men, in this case the husband and the wife haue not but the third part, and the other two men the other two parts.

Also if two or three together disseiseth an other of lands and tenements to their own vses, then such disseisors be called ioyntenants.

Now shall be saide of this matter touching Ioyntenants in the next Chapter.

Tenants in common. Chap. 16.

TEnants in common (as I saide before) be they that haue landes or tenements in fee simple, fee taille, or for terme of life, which haue such landes and tenements by seuerall titles, and not by one ioint title, and none of them knoweth that which is seuerall to him. And in this case they ought by the law before partition made betweene them, to occupy such lands and tenements in common, & vndeuided, and to take the profits in common. And because they come to such lands & tenements by seuerall titles, and not by one selfe ioynt title, and their occupation & possession in the same is among them in common, they be called tenants in common, or tenãts pro indiuiso. As for example, if a man enfeoffe two ioyntenants in fee simple, & the one of them alieneth that, that to him belongeth to an other in fee, now the other ioyntenant & he to whom the alienation was made, be tenants in common, for that they be seised of such tenements by seuerall titles, for the one commeth to the one half by the feoffement of the iointenant, and the other hath the other halfe by force of the first feoffement made to him and to his first fellow, and so they be in by seuerall titles, and by seue-

seuerall feoffements.

And it is to wit, that when it is said in any bookes, that a man is seised in fee without more saying or addition, it shalbe understood fee simple, for it shall not be understood by such a word in fee, that a man is seisd in fee tayle, except there be put in it such addition in tayle. Diffinition of fee only.

Also if three ioyntenants be, & the one of them alieneth that which vnto him belongeth to an other in fee, in this case the alience is tenaunt in common with the other two ioyntenants. But yet the other two ioyntenants bee seisd of the two parts iointly, and of these two parts the survivor betweene them holdeth place. Ioyntenants.

Also if there be two ioyntenants in fee, & the one giueth that, that vnto him belongeth to an other in the taile, the donee and the other iointenant be tenants in comon. But if the lands be giuen to two men, and to the heires of their two bodies engendred, the donees haue a ioynt estate for terme of their liues, and if each of them haue issue and die, their issues shall hold in common.

Also if landes be giuen to two men, to haue & to holde the one halfe to the one & to his heires, and the other halfe to the other & to his heires, they be tenants in common.

Also if a man seised of certaine lands enfeoffeth an other in the halfe of the same land without any speech of assignement or limitation of the same halfe in seuerally, at the time of the feoffement, then the feoffee and the feoffour shall hold their parts of the land in common.

And as it of tenaunts in common of landes or tenements in fee simple, fee tayle, euen so it

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tenants. is of tenaunt for terme of life. Therefore if two ioyntenants be in fee, & the one letteth to a man that, that vnto him belongeth for terme of life, and the other ioyntenant letteth that which to him belongeth, to an other for terme of life also, these two lessees be tenants in common for terme of their liues. Also if a man let landes to two men for terme of life, and hee to whom the one granteth all his estate to another, then that other tenant for terme of life, and hee to whom the graunt is made, shall be tenants in common during the time that both the lessees be alme.

Note, if there be two ioyntenants in fee, and that one letteth that, that vnto him belongeth, to another for terme of life: the tenant for terme of life during his life, and the other tenant that did not let, be tenants in common. And vpon this case a question may rise as thus. Let the case be that the lessor hath issue & dieth, liuing the other ioyntenant his fellow, and liuing the tenant for terme of life, the question is whether the reuersion of the halfe that the lessor hath shall discend to the issue of the lessour, or whether the other iointenant shall haue it by the suruiuour or no. And some haue said, that the other iointenaunt shall haue the reuersion by the suruiuour, for as much as when the ioyntenants were iointly seised in fee simple, though one of them made an estate of that, that vnto him belongeth for terme of life, and though hee hath seuered the franketenement of that, that to him belongeth by the leafe, yet he hath not seuered the fee simple.

Question.

But the fee simple abideth to them ioyntly as it was before. And so it seemeth vnto them, that

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The other ioyntenant which surviueth shal haue the reuersion by the survivour. But other haue thought the contrary, and this is their reason. When one of the ioyntenats letteth that which vnto him belongeth to another for terme of life, by such lease the franktenement, is severed from the iovnture. So that the reuersion that is dependant vpon the same franktenement, is severed from the iointure. Furthermore, if the lessor had reserued to him a yearely rent vpō the lease, the lessor only should haue the rent, which is a proofe that the reuersion is onely in him, & that the other hath nothing therein.

Also if the tenant for term of life were impleaded, and make default after default, the lessour shall bee onely hereupon received to defend his right and not his fellow, which proueth the reuersion of the halfe to be onely in the lessour, and so consequently, if the lessour die, lyuing the lessee for terme of life, the reuersion shal discend to the heires of the lessor, and shall not come to the other iointenāt by the survivor after these mens opinions, yet it is doubtfull. But in this case, if the ioyntenant that hath the franktenement, haue issue and dye, lyuing the lessor and the lessee, then it seemeth that the issue shall haue the halfe in his demeine as of fee by discent, forasmuch as the franktenement may not by nature of the iovnture be annexed to a reuersion, and it is certaine that he that made the lease was seised of the halfe in his demeine as of fee, and that none shall haue any iovnture in his franktenement. So that this shall discend to his issue. Resceit. Quere.

If three iointenants be, and the one releaseth by

Releaſe. by his deed to one of his fellowes al the right he hath in the land, then hath hee to whom the releaſe is made, the third part of the lands by force of the releaſe, and he and his fellow ſhall holde the other two parts ioyntly. And as to the third part that hee hath by force of the releaſe, he holdeth it with himſelf and his fellow in common.

And it is to wit, that ſometime a deede of releaſe ſhal take effect to put the eſtate of him that made the releaſe, in him to whom the releaſe is made as in the caſe aforeſaid.

Alſo if a ioynt eſtate be made to the husband and wife and to a third perſon, & the third perſon releaſeth his right that hee hath to the husband: then hath the husband the halfe which the third perſon had, and the wife of this hath nothing. Semblably, if the third perſon had releaſed to the wife not naming the husband in the releaſe, then ſhould the wife haue the halfe that the third perſon had, and the husband nothing of this but in the right of his wife, becauſe ſuch releaſe ſhall enure to put the eſtate in him to whom it was made of all that, that belongeth to him that made the releaſe. Againe in ſome caſe a releaſe ſhall enure and ſerue to put all the right that a man hath that made that releaſe in him to whom it is made. As a man being ſeiſed of certaine lands is diſſeiſed by two diſſeiſors if the perſon diſſeiſed by his deed releaſe all his right to one of the diſſeiſors, then he to whom the releaſe is made ſhall haue and holde all to him alone and put one his fellow out of the occupation of it. And the cauſe is, for that the two diſſeiſors were ſeiſed by wrong by them done a-

Diſſeiſours.

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gainst the law, & when one of them getteth the release of him that had right to enter, this right resteth in him to whom the release is made, and in such plite as if he that had the right had entred & infeoffed him of the same. And the cause is, for that he that before had an estate by wrong, hath now by the release a rightfull estate.

And in some case a release shall inure & take effect by way of extinguishment, and such a release shall helpe the iointenant to whom the release was not made, aswell to him to whom it is made, as if a man be disseised, and the disseisour maketh a feoffment to two men in fee, if the person disseised release to one of the feoffees in fee by his deed, then such release shall inure to both the feoffees, because the feffees haue their estate by the Law, that is to say, by the feoffement, and not by wrong done to any other. Release by way of extinguishment.

And in like maner, if the disseisour make a lease to a man for terme of life, the remainder ouer to an other in fee, if the disseisee will release to the tenant for terme of life all his right, this release serueth aswell to him in the remainder, as the tenant for terme of life. And the cause is, for that the tenant for terme of life commeth to his estate by the course of the lawe, and for this cause the release shall inure and take effect by way of extinguishment of the right of him that hath released. And by this release the tenant for terme of life hath no greater estate then hee had before the release made vnto him, and yet the right of him that released is all vtterly extinct & gone. Wherfore forasmuch as such a release cannot inlarge the estate of the tenant for A release shall inure to him in the remainder.

terme

terme of life, it is reason, that it shall serue him in the remainder.

Also if there be two parceners, and the one alieneth his part to an other, the other parcener and the alience be tenants in common.

Tenants in cō. mon by title of prescription.

Furthermore, tenants in common may be by title of prescription, if that one & his auncestors or they whose estate he hath in the halfe, haue holden in common the same halfe with the other tenant that hath the other halfe, & with his auncestours, or them whose estate he hath as vnderstood time out of mind. And ye shal marke, that

Actions seuerall.

in some case tenants in common ought to haue of their possession seuerall actions, & in some case they shall ioyne in one action. For if there be two tenants in cōmon, & they be disseised, they ought to haue against the disseisor two assises, and not

Assise.

one assise. For euery of them ought to haue an Assise of his halfe, because they were seised by seuerall titles. But otherwise it is of Iointenants, for if there be xx. iointenants, & they be

Assise.

disseised, they shall haue in all their names but one assise, because they haue but one ioint title.

Also if there be three iointenants, of whom the one releaseth to one of his fellowes all the right he hath, and afterward the other two be disseised of the whole, in this case they shal haue in both their names one Assise of the two parts: And as to the third part, he to whom the releas was made, ought to haue therof an Assise in his owne name, because as to the third part he is tenant in common.

Diuersitie.

Also as to sue actions that touch the realtie, there is a diuersitie betweene parceners that are

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in by diuers diſcents, and tenants in common. For if a man ſeiled of certain lands in fee, hath iſſue two daughters, and die, & they enter into the landes as coheires, and each of them haue iſſue a ſonne, and die without partition made betweene them, ſo that the one halfe diſcendeth to the ſonne of thone parcener, & the other halfe to the ſonne of the other, & they enter & occupie in comon, & be diſtreined, in this caſe they ſhal haue in their two names one allie, & not two allies. And yet the caſe is, though they come in by diuers diſcents, yet they be coheires & parceners. Alſo if two tenants in common of certain lands in fee, giue the ſame to another man in the taile, or let it to an other for terme of life, yeelding an annuitie, or certain rent, or a pound of pepper, or an hauke, or an horſe, & they be ſeiled of theſe ſeruices, & afterward all the rent is behind, and they diſtrain for it, and the tenant maketh reſcous, in this caſe as to the rent and the pound of pepper, they ſhall haue two allues, and as to the hauke, & the horſe but one Allie. And the caſe why they haue two Allies as to the rent and pound of pepper is, for that they were tenats in common by ſeuerall titles, and when they made a gift in the taile, for leaſe of terme of life, ſauing and reſeruing to them the reuerſion, and yeelding to them certaine rent, this reſeruation is incident to their reuerſion. And becauſe their reuerſion is in common and by ſeuerall titles, euen as their poſſeſſion was before the rent and other things which may be ſeuered, and which were to them reſerued vpon the gift, or vpon the leaſe which be incident by the lawe to the reuerſe. Reſcous.

Plaintis Assise.

sion, therefore such things so severed be of the nature of the reuersion. Wherefore it behoueth that the rent and the pound of Pepper which may be severed to be then in common by seuerall titles. And of this they shall haue two Assises, and euery of them in his Assise shall make his plaint of the halfe of the rent, and of the halfe of the pound of Pepper. But of the hauke, and the horse, which cannot be severed, they shall haue but one Assise, for it were an absurdity and ryding inconuenient to make a plaint in Assise of the halfe of an Hauke, or of the halfe of an horse. In like manner it is of the other rents & services that tenants in common haue in ground by diuers titles.

Personall action.

And ye shall vnderstand, that concerning actions personals, tenants in common ought to haue them ioyntly in all their names, that is to say, of trespasse, or of offences that touch their tenements in common, as of breaking of their houses, breaking of their closes, and pastures, wasting and defouling of their grasse, cutting of their woodes, and of fishing in their ponds, and such other, and they shal recouer iointly damages, because the action is in the personaltie and not in the realtie.

Damages

Tenants in common shall haue one action of debt,

Also if tenants in common make a lease of their tenements to an other for terme of yeres, yeelding vnto them yerely a certaine rent, if the rent bee behind, they shall haue one action of debt against the lesser, and not diuers actions, because the action is in the personaltie. But in an annuitie for the said rent, they ought to bee severed, because it is in the realtie, as be Assises.

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Of Chattels. Chap. 17.

IT is to be knowen, that as there be tenants in common of lands or tenements: so there be tenants in common of possessions & property of chattels, aswell reall as personal. Of reall, as if a lease be made of certaine lands to two men for terme of twentie yeares, and when they be thereof possessed, the one graunteth that, that vnto him belongeth during the terme to an other, he to whome the graunt is made, and the other shall hold and occupie in common.

Also if two iointenants haue the ward of the body & of the lands of an heire within age, and the one of them graunteth to another that, that vnto him belongeth of the same ward, then he to whom the graunt is made, and the other that graunteth not, shall haue & hold it in common. Iointenants of a ward.

Of Chattels personals: as if two haue a ioynt estate, either by gift, or by buying of an House, or of an Oxe, or such like, and the one of them graunteth that, that to him belongeth, here shall the graunter, and hee that graunted not, haue and possesse such chattell personall in common. And in such case where diuers persons haue chattels reals or personals in common, and by diuers titles, if one of them die, the other that suruiueth shall not haue his fellowes part by the suruiuour, but the executors of him that dyeth shall holde and occupie it with him that suruiueth, in like forme as their testatour did, or ought in his life, forasmuch as their titles and rights were seuerall. Also in the case aforesaide, if two haue an estate in common for terme of yeares, and the one dieth

occupie all and put the other out of his possession and occupation, then shall he that is put out haue against the other a writ de Ejectione firmæ for the halfe. In semblable maner where two hold the ward of landes or tenements during the nonage of a child, if one shal put out the other of his possession, he that is out shall haue a writ Ejectione custodiæ of the halfe, because these things be chattels reals & may be appoꝛtioned & seuered. But no action of trespasse lyeth for one against the other (as for example. Quare clausum fregit & herbam suum conculcauit & consumsit, nor such like actions) forasmuch as each of them may enter and occupie in common. But if two be possessed of chattels, personals in common by diuers titles, as of an Horse, an Oxe or a Cow, if the one take it all to himselfe out of the possession of the other, the other hath none other remedie, but to take it againe from him that hath done him the wrong, when he may see his time.

A writ de Ejectione firmæ

De Ejectione custodiæ.

In like maner of chattels reals, which may not be seuered, as in the cal. aforesaid, where two bee possessors of the wardship of the body of a child within age, if one of them shall take the child out of the possession of the other, the other hath no remedy by any action at the law, but to take the childe out of the others possession, when he seeth his time.

Finally, yee shall vnderstand, that when a man in pleading and declaring his cause, will shewe a deede of Feoffement made vnto him, or a gift in fee tayle, or a Lease for terme of life, of any lands or tenements, he shall vse his termes in this wise, and say, by force of such feoffement, gift,

Forme of pleading.

gift, or lease he was seised, &c.

But where a man will declare or pleade a lease or graunt made vnto him of a chattell reall or personal, then he shal say by force of which he was possessed.

Of Partition to be made by Ioyntenants & tenants in common, enacted by 2. statutes made, the one in An. 31. H. 8. & the other in 32. H. Chap. 18.

ALL ioyntenants and tenants in common of any estate of inheritance in their owne rights or in the right of their wiues, of any lands or hereditaments within this realme of England, Wales, or the Marches of the same, shall and may be compelled to make partition betweene them, of the same which they so hold as ioyntenants or tenants in common, by a Writ de partitione facienda, to be deuised in the Chancery in like maner as coparceners are compelled to do, and the same writ to be pursued at the common law. And after such partition made, euery of the said ioyntenants and tenants in common, shal and may haue aide of the other, or of their heires, to the intent to deraine the warranty paramount, & to recouer for the rate as is vsed betweene coparceners, after partition made by the order of the common law.

Writ de partitione facienda.

Aide prayed.

Item, in the xxvii. yeare of King Henrie the eight, Chap. 32. It is further enacted, that all ioyntenants & tenants in common which holde ioyntly or in common for terme of life, yeare or yeres: or ioyntenats or tenants in common, where one or some of them haue an estate for terme of

life or yeares, with other that haue an estate of inheritance or freeholde in any landes or other hereditaments, shall be compellable by writ of Partition to be pursued out of the Chauncerie vpon their cases, to make seuerance & partition of all such landes & hereditaments as they hold ioyntly or in common for terme of life or liues, yere or yeres, or where one or some of them hold ioyntly or in common for terme of life or yeares with other that haue an estate of inheritance of Freehold. Prouided that no such partition nor seuerance, be hurtfull to any person, other then such as be parties vnto the saide partition, their executors or assignes.

Of Conditions. Chap. 19.

Forasmuch as euery estate is either pure or conditional, it were not amisse to make some declaration of the nature & efficacie of conditions. Wherefore yee shall vnderstand, that of conditions, some be actual conditions, and be called expresse conditions, or conditions in deed, and other some be conditions in law, which be called in Latin, conditiones tacitæ siue conditiones implicitæ, because they be secretly employed by the law and not expressed.

Diuision.

Conditions in deed, bee such as be knit and annexed by expresse wordes to the Feoffement, lease or graunt, either in writing or without: as for example, if I infeoffe a man of certaine landes, reseruing to me, and to my heirs, so much rent yearely to be paid at such a feast, and for default of payment, that it shall be lawfull for mee to reenter: this is a Feoffement vpon condition of payment. And here the reenter of the Feoffor

for

for the not payment of the rent shall dissolue and vtterly defeat the feoffement. Demplable it is of gifts in talle, leales, &c. But if the condition be, that for default of payment of the rent, it shal be lawfull for the feoffour to enter againe into the lands, and to hold them till he be contented and satisfied of the rent: this condition not performed doth not dissolue nor vndoe the feoffement, but onely giueth to the feoffour an authoritie to retaine the lands (as it were by way of distresse) till he hath leuied the arrerages of the rent. Distresse

And ye shal well marke and obserue, that conditions be sometime made to be performed on the feoffees behalfe, & sometime on the feoffors behalfe: On the feoffees behalfe, as when I Tenants in morgage. infeoffe you of lands or tenements, vpon condition that you shall doe such an act, as to pay vnto me or mine heires such an annuell rent. On the feoffours behalfe, as when I make a feoffement vnto you vpon condition, that if I pay or cause to be payed vnto you before such a day, such a summe of money, then it shall be lawful for me to enter againe and retaine my lands in my former estate: In this case hee that is the feoffee, is called tenant in morgage, which is as much to say, as dead-gage, and it seemeth that the cause why it is so called, is forasmuch as it is doubtfull whether the feoffer will pay at the day limitted and prescribed such a summe of money for the redemption of his lands, or not, for if hee doe not, his title or interest in the lands thus gaged and oppignorate, is vtterly extinct and gone, without all hope of renewing.

Yee shall also note, that if the Morgager

byeth before the day of payment, his heyre may redeeme the land very well, euen as well as his auncestour that mortgaged the land might haue done, although there bee no mention made of heires in the writing.

Also if when the money is lawfully by the mortgager or his heire tendred and proffered, and the lessour refuseth to receiue the same, the feoffour or his heire may enter, & then hath the feoffee no remedie for his money at the common law. Ye shall vnderstand also, that some conditions be vtterly void in the law, and of none efficacie, vertue, or strength. As if a feoffement be made of lands in fee simple vpon condition, that the feoffee shall not alien or put away the same to none other, this condition I say is voide, because the feoffee is restrained of his whole power that the law giueth in such case vnto him, and which power and libertie is in maner included in euery feoffement, yet I may abridge him of part of his power, as to condition with him that he shall not alien the lands to such a person, or such. But of gifts in taile otherwise it is, for if I giue landes to a man, and to the heires of his body lawfully begotten, vpon condition that he nor his heires shall alien the landes to none other person, this condition is good and effectuall in the Law, and if he or his heires contrarie to the condition do alien them, then the giuer or his heires may very well enter and retaine the landes for euer, because this condition shall stand with the forenamed statute of Westminster the second, which prohibiteth such alienations to be made.

Conditions voide.

Gift in taile vpon condition.

Yet, e-

Hetherunto haue I spoken of Conditions in deed, now will I shewe what be Conditions in law that be annexed to any estates.

Estates vpon conditions in law.

Know ye therefore, that if the office of a Parker, Steward, Constable, Bedell, or Bailiffe, or such like office, be granted to a man for terme of his life, though there be no condition at all mentioned in the graunt, yet the law speaketh of a condition in this case, which is, that if the partie to whom such office is giuen, shall not execute all poynts appertayning vnto his office accordingly, by himselfe, or his lawfull deputie, it shall be lawfull for the graunter, to enter and discharge him of his office, and this condition is called a condition in law.

There be also three other maner of Estates vpon condition, that is to say, conditions against the law, conditions repugnant, and conditions impossible. First estates vpon conditions against the lawe be, as if a man make a feoffement, gift, graunt, or lease vpon condition, that if the feoffours, donours, grauntours, or lessours, kill I. S. which is not the kings enemy, or burne his house, that then it shall be lawfull to the feoffours, donours, &c. to reenter, this condition is voide, and the estate good.

Conditions against the law.

And like law is, if such conditions be to be performed of the part of the feoffee, grauntee, &c.

But if it be that a lease for terme of yeares be made of land vpon condition, that if the lessee kill I. S. that then he shall haue fee simple, although that he in this case performe the condition, his estate is nothing thereby inlarged, because the condition is against the law.

Alle

Obligation.

And yee shall vnderstand, that where an Obligation is indorsed with a condition which is against the law, both the obligation and also the condition be clearely void in the law.

Conditions repugnant.

Estates vpon conditions repugnant be, as if a feoffement, or a gift in taile, be made vpon condition that the feoffee or donee, shal take no profit, or shall doe no waste, and such other like, such conditions be voide, and the state good and effectuall in the law notwithstanding.

Also if a lease be made for terme of life, vpon condition that he shall not doe fealtie, that is as a void condition.

Likewise it is, if a man that hath nothing in the manour of Dale, graunteth a rent charge going out of the same, vpon condition, that the person shal not be charged, this graunt is good, and the condition is void.

Conditions impossible.

Estates vpon conditions impossible be, as if a feoffement be made vpon condition, that if the feoffee goeth not through the Sea on foote to Calcis in one day, then it shall be lawfull to the feoffour to reenter, this is a frustrate and voide condition, and yet the estate is good.

Like law is of a lease made for terme of yeres, &c. or an obligation with a condition impossible vt supra, the obligation or lease is good, and the condition void to all purposes.

An act how strangers shall take aduantage of Conditions, made An. 32. H. 8. Chap. 20.

IT is enacted, that as well persons which haue, or shall haue any gift or graunt of the king by his Letters patents, of any landes, parts.

Perſonages, titles, or other hereditaments, or any reuerſion of the ſame which did belong to any monaſtery or other eccleſiaſticall houſe diſſolued or otherwiſe come into the kings hands ſince the fourth day of February, in the xxviii. yeare of our Soueraigne Lord king Henry the eight, or which at any time heretofore did belong to any other perſon, and after come into the kings handes, as alſo all other perſons being graunters or aſſignees to the King or to any other perſon, their heires, executors, ſucceſſours, and aſſignes, ſhall haue like aduantage againſt the farmours, and their executors, adminiſtrators and aſſignes, by entrie for non-payment of the rent, or for doing waſte or other forfeiture, and alſo ſhall haue the ſame aduantage by action onely, of not performing of other conditions, couenants or agreements contayned in the indentures of their leaſes or graunts againſt the ſaide farmors, & grauntees, their executors, adminiſtrators, and aſſignes, as the ſaid leſſors or grauntors themſelues might haue had at any time. And againe mutually and on the other ſide, the ſaid farmours and grauntees for terme of yeares, life, or liues, their executors, adminiſtrators and aſſignes, ſhall haue like aduantage againſt them for any condition, couenant and agreement contained in the ſaide Indenture, as they might haue had againſt their ſaide leſſors and grauntors, their heires, ſucceſſors, all benefits and aduantage of recouries in value, by reaſon of any warranty of deed, or in law by voucher or otherwiſe onely except.

Prouided that this Act ſhall not extend to

charge

charge any person for breach of any couenant or condition comprised in any such writing, but for such as shalbe broken & not performed after the first day of September in the 32. yeare of this king and not before.

Liuery of seisin, and Attornement. Chap. 21.

In all feoffements, gifts in taile, leases for terme of anothers life, of lands or tenements, there can be no alteration transmutation of possession by the auncient lawes of this realme, vnlesse there be a certaine ceremony exhibited and solempnized in the presence & sight of neighbours or others, which ceremony is called liuery of seisin.

The maner of liuery of seisin.

And yee shall vnderstand, that this ceremony of liuery of seisin is done, when the feoffour, donour, lessour, or their deputie come with the neighbours solempnly to the lands or tenements, and they put the feoffee, donee or lessee, in possession of the saide landes or tenements, by deliuering vnto him a clod of earth, or the ring of the dore, or some other thing in the name of seisin, and for this selfe cause this ceremony of lawe is called liuery of seisin, that is to say, a tradition or giuing of seisin.

Diuersitie betweene possession and seisin.

But this ceremonie is not required in leases for terme of yeres, or in leases at will, forasmuch as the lessour in such lease remaineth still seised, and the lessee onely hath possession without any liuery of seisin, and therefore the termes of the law be, that such a man is possessed, whereas in feoffements, gifts in tayle, and leases for life, he is called seised.

Where re

Wherefore if a Feoffement or Leafe for life be made of lands or tenements, & before that the liuery of ſeiſin be made, the feoffour dieth, the heire of the feoffour ſhall haue the landes. Per ſummum ius, that is to ſay, by the rigour of the law, notwithſtanding that the feoffes haue paid to the feoffor the price of the land, and although the feoffe, be in poſſeſſion. But otherwiſe it is of a leaſe for terme of yeares.

A like ceremonie is vſed when rent charge, rent ſeruice, rent in groſſe, a villaine in groſſe, common in groſſe, common for beaſts, certaine eſtouers, and ſuch other thinges as paſſe by way of graunt, be graunted, for it is no full and perfect grant till it be conſignat and ſealed as it were with the ceremony of atturnement. This Atturnement is nothing elſe, but when the tenant of land of which a rent graunted is granted, or out of which a rent is graunted, doth make ſome euident ſignification and token that hee accepteth the perſon to whom the graunt is made, to be in the ſame reſpect vnto him that the graunter was. As for an example, if the tenant of the land, after hee haue heard of the graunt, commeth to the graunter, that is to wit, to the perſon to whom the graunt was made, and ſay in this wiſe, or in like effect. Atturnement.

I agree vnto the graunt made vnto you by ſuch a man, or I am well apaid and contented of the graunt that ſuch a man hath made vnto you. But the moſt vſuall frequent forme of atturnement is, to ſay: Syr, I atturne vnto you by force of the ſaid graunt, or I become your tenant, or to deliuer vnto the graunter, a peny, or How Atturnement ſhall be made.

a halfe peny by way of a turnement.

If a man maketh first one graunt to one person, and after another to another person, that graunt shall stand to which the tenant will atturne, although it be to the latter graunt.

And ye shall note, that if a man be seised of a manour, which is parcell in demeane, and parcell in service, and doth alien the same Manour to another, vnlesse the tenaunt of the Manour doe atturne, the service shall not passe, onely tenants at wil excepted, for it needeth not to cause them to atturne.

Diuersitie. Note furthermore, there is a great difference betweene giuing a peny in name of seisin, and giuing by way of atturnment, for when it is giuen by the tenãt to the grantee in the name of seasin, it doth not only employ an atturnmẽt, but also it giueth him such a seisin, that if the rẽt afterward were behind & not paied, he may now vpon the seisin of the peny after a lawfull distresse taken, & after rescous made, bring an assise of nouel disseisin, where as if it were giuen onely by way of atturnment he could not bring the assise, but his writ of rescous onely, if rescous were made.

Assise.

Writ of rescous.

Also ye shall vnderstand, that where landes be deuisable by Testament, by the custome of any auncient Borough or Cittie, if the reuersion of any landes be by Testament bequeathed to a man in fee, and the Testator, which we call the Deuisor, dieth, the deuisee, that is to wit, he to whom the deuise was made, hath forthwith the reuersion in him without further ceremonie of Atturnement. Likewise it is, if a man by testament doth bequeath a rent charge that he is sei-

Atturnement.

sed

sed of, or of a rent service, there needeth none atturnement at all.

If two ioyntenants be of land, and the Lord graunteth the services to an other, if one of the ioyntenants atturneth, it is enough.

Finally, if a leasse be made for terme of life, the remainder to an other in tail, the remainder ouer to the right heire of the tenant for terme of life, in this case if the tenant for terme of life, will graunt his remainder in fee to another by his deede, this remainder passeth forthwith, without any Atturnement, for if any atturnement were requisite, it should be made of the tenant for terme of life, which in this case is the grauntour himselfe. And in vaine it is that the grauntour should be inforced to atturne, sith an atturnement is adhibited & had to none other purpose then to haue the consent and agreement of the particular tenant, to the intent that it may appeare, that he hath notice and knowledge of this graunt, but here where the particular tenant himselfe is the grauntour, an atturnement were superfluous, and more then needed. Not requisite.

Note furthermore, that where there is Lord and tenaunt, and the tenant leaseth his tenements to a woman for life, the remainder ouer in fee, the woman taketh a husband, & after the Lord graunteth the services &c. to the husband, in this case during the couerture the services be put in suspence. But if the wife die, leauing the husband, the husband and his heyres shall haue the rent of them in the remainder, &c. And in this case ther needeth no atturnement by word, because the husband that ought to atturne, accepteth Suspence.

seth the graunt of the seruices, the which acceptance is an attournement in the lawe.

Of Seruice. Chap. 22.

HEtherunto haue I briefly touched & ouerrun the sundry kindes and formes of Estates. Now forasmuch as there is no tenure, but hath vnto it some seruice knit and annexed, it were very necessary to declare how many kindes of seruices there be, & what seruice is due to euery tenure. For the knowledge hereof, ye shall vnderstand, that the principall and most common kinde of seruice that the tenant oweth to his Lord, is called knights seruice.

Knights seruice. Chap. 23.

KNights seruice includeth homage, fealtie, & for the most part escuage, & whatsoeuer holdeth his lands by Knights seruice, is bound by the lawe of this realme to do vnto his Lord homage & fealty, & to pay for the most part escuage, when it shall be assessed by authoritie of Parliament, as hereafter more plainly shall be declared.

Homige.

Homage is the most humble and reuerent seruice that a man of free estate & condition can do, for whe the tenant shal do homage to his Lord, the Lord shall sit, & the tenant then shall kneele downe before him vpon both knees, holding his hands betweene his Lords hands, & say in this wise: I become your man from this day forward, of life, & of member, & earthly honor, and to you shall be faithfull & true, and faith to you shall beare for the landes that I claime to holde of you: sauing the faith that I beare vnto our soueraigne Lord the king, and then the Lord so sitting,

How the tenant shall do homage.

seeing shall kisse him. But if an Ecclesiasticall person, which by his order and profession hath addicted himselfe to the seruice of God in especiall, shall do homage to his Lord, he shall say, I do to you homage, and shal be to you faithfull and true, & faith to you shall beare for the tenements that I hold of you, saning the faith which I owe to our soueraine Lord the king. What a Religious person shall say when he doth homage.

Also when a woman not maried, doth homage to her Lord, she shall not say, I become your woman, for it is not conuenient that a woman should be the woman of any other then of her husband that she shall marrie, but shall say euen as the Ecclesiasticall person saith, I doe vnto you homage, &c. And if perchaunce a man holdeth sundry landes and tenements of sundry Lords, & euery of them by knights seruice, then in the end of his homage making, hee shall say, saning the faith that I owe to our soueraigne Lord the king, and to mine other Lords. And none is bound to do homage to the Lord, vnles it be such tenat as hath in the tenancy an estate of fee simple, or fee taile, either in his own right, or in the right of an other. For if a woman haue lands or tenements in fee simple, or fee taile, which she holdeth of her Lord by knights seruice, and taketh an husband, & hath issue, in this case the husband in the life of his wife, shall doe homage, because he hath title to haue the landes by the curtesie of England, if he ouer liueth her, & also he holdeth them now in his wiues right, yet before issue had betweene them, the homage shall be made in both their names. But if the woman dyeth before any homage made in her life, What a woman shall say? What tenant shall do homage?

life, and the husband keepeth still the landes as tenant by the curtesie, now hee shall not doe homage to his Lord, because he hath now an estate but for terme of life.

Fealue.

Fealtie, is as much to say, as fidelitie, or faithfulnesse, in doing whereof the tenant shall hold his hand vppon a Booke, and say thus.

How a tenant shall do fealty.

Heare you this my Lord, I to you shal be faithfull and true, and faith to you shall beare for the lands and tenements, which I claime to holde of you, and duely shall doe to you the customes and seruices which I owe to doe to you at the termes assigned, as mee helpe God. And then he shall kisse the booke. But he shall not kneele as hee that doth homage, nor doe such humble or reuerent seruice as is before declared in homage.

Diuersitie betweene homage and fealtie.

And ye shall obserue, that homage cannot bee done but to the Lord himselfe, whereas the Steward of the Lordes court or the Baylife may take fealtie for the Lord.

Also tenant for terme of life shall doe fealtie, but homage as I said he cannot doe.

Now as concerning Escuage, that is to say, the seruice of the shield, ye shall vnderstand, that he that holdeth his lands by escuage, when the King maketh a voiage royall into Scotland for the subduing of the Scots, is bound to bee with the Kings Maiestie by the space of xx. dayes, well and conueniently arrayed and appointed for the warre. And he that holdeth his land but by the moitie of the fee of Knightes seruice, is bound by the force of his tenure to be with the King by the space of xx. dayes, and

so

so proportionably according to the rate & quantitie of his tenure.

But now to our institute and purpose, after this voyage Royall into Scotland, in which the king goeth in person, and after his returne into England againe, a Parliament is wont to be summoned, in which shalbe prescribed and assessed what euery person that holde his land by homage, and went not with the King, neyther by himselfe nor by his deputie, shall pay to his Lord in satisfaction of his not seruing, and according to the taxation hereof, euery tenaunt shall pay to his immediate Lorde, whether it be to the king or other, after the rate and portion of his tenure, if he holdeth by an hole fee, he shal pay the whole escuage, if by a moitie the halfe, if by the fourth part of a fee, the fourth part, &c. And this money thus assessed is called scutage, or escuage, for which the Lorde to whom it is due, may very well for the non payment thereof distreine. But here it is to be noted, that some tenants by custome vsed time out of minde, are bound to pay but the moytie, or the third part of that, which shall be assessed and limitted by act of Parliament. Parliament. Distres of escuage.

Yea, and the custome is in some place, that to what summe of money soeuer Escuage is assessed, the Tenaunts shall pay neuer but such a certaine summe of money, and this kinde of escuage, is called escuage certaine, that is to say, where escuage is assessed by the Parliament, to a more or lesse summe, the Tenaunt to pay to the Lord, v. s. and no more, nor no lesse, &c, such a tenure is called Socage tenure, & not knightes Escuage certaine.

seruice, whereas the other is called escuage vncertaine.

Escuage vncertaine.

Finally ye shall vnderstand, that escuage vncertain is alwayes adiudged to be knights seruice, and draweth vnto it, warde, mariage, and reliefe, but escuage certaine is not knights seruice, but is of the tenure of Socage, as shall be herafter more amply shewed.

Of Ward, Mariage, and Reliefe.

Chap. 24.

EVery Knightes seruice draweth vnto it, Warde, Mariage, and Reliefe. Wherefore it is now right expedient somewhat to entreat of them.

Warde.

Ye shall therefore be admonished, that when the tenant which holdeth his lands by knights seruice dyeth, his heire male being at that time within the age of xxi. years, the Lord shall haue the ward, that is to say, the custodie or keeping of the landes so holden of him to his owne vse and profit, till the heire commeth to the full age of xxi. yeares. For the law here presumeth that till he come to his age, he is not able to doe such seruice, as is of this tenure required.

Mariage.

Furthermore, if such heires be vnmaried at the time of the death of the tenant, then the lord shall haue also the ward, and the bestowing of the mariage of him.

The full age of a woman.

But if a tenaunt by Knightes seruice dyeth, his heire female being of the age of xiiii. yeares or aboue, then the Lord shall haue the Warde neither of the land, ne yet of the body of such an heire, and the reason hereof is, because a woman of that age, may haue a husband able to

doe

bot knights ſeruice, that is to ſay, to wait vpon the Kings Maieſties perſon, when he goeth into Scotland with his armie royall.

But if ſuch an heire female be within age of xiiii yeares, and not maried at the time of the death of her anceſtor, then the Lord ſhall haue the ward of the lande holden of him, till ſuch heire female commeth to the age of xvi. yeares, by force of an acte of Parliament in the ſtatute of Weſtminſter 1. cap. 12.

Note that there is a great diuerſitie in the law, betweene the ages of females & of males, for the female hath theſe many ages appointed by the lawe. Firſt at vii. yeares of age the Lord her Father may diſtraine his tenaunts for ayde to marrie her. Secondly, at xii. yeares of age, ſhe is dowable. Thirdly, at xiii. yeares ſhe is able to aſſent to Matrimonie. Fourthly, at xiiii. yeares ſhe is able to haue her lande, and ſhall be out of ward, if ſhee be of this age at the death of her auncestor. Fiftly, at xvi. yeares ſhe ſhall be out of ward though at the death of her auncestor ſhe was within the age of xiiii. yeares. Sixtly, at xxi. yeares ſhee is able to make alienations of her landes or tenements. Whereas the man hath but two ages, the one at xiiii. yeres to haue his landes holden in Socage, and to aſſent to Matrimonie, the other, at xxi. to make alienations. Diuerſitie of age. Age of a woman. The age of a man.

Yee ſhall vnderſtande that by the Statute of Merton, 6. Chap. it is enacted, that if in caſe the lords do marry their wards to villains or others (whereby is diſparagement,) if ſuch heires ſo maried bee within the age of xiiii.

yeares, or such age that the said Warde cannot cõsent to the mariage, then if the friends of this heire complaine, and feele themselues grieued with this vnmeete mariage, the next of kinne to the heire, vnto whom the heritage cannot discend, may enter into the landes, and put out the Lord, which is gardeine in chualrie, and if the next kinsman will not thus doe, another kinsman of the infant may doe it: And shall take the issues and profits to the behoofe and vse of the heire, and shall yeelde accompt thereof vnto him when he commeth to his full age.

Accompt giuing.

Diuers disparagements.

And there bee diuers other disparagements which be not expressed in the saide statute, as if the heire being within age of cõsent, & in ward, be maried to a decrepit person, or cripill, as to one that hath but one foote, or one hand, or that is a deformed creature, or hauing any horrible disease or continuall infirmitie. All these and such like be disparagements.

But here also ye shall vnderstand, that it shal be said no disparagement, vnlesse the heire be so maried when he is within age of discretion, that is to say, within the age of xiiii. yeares. For if he be of that age or aboue, & assenteth to such mariage, it is no disparagemẽt, neither shal the Lord for such mariage lose his ward, because it shal be reputed & assigned to the folly of the heire being of age of discretion, to consent to such mariage.

Now if the Lord, then being a gardeine, offer to the heire being his warde, a conuenient mariage without disparagement, & the heire refuseth it, as he may at his choise and election very well doe, then the Lord shall haue the value of

Value of mariage.

the

the mariage of ſuch heire, when he commeth to his full age. But yet if he marie himſelfe being ſo in ward, againſt the will of his gardeyn, then he ſhall pay the double value by force of the ſtatute of Merton before remembred. Double value of mariage.

And ye ſhall note, that if landes holden by knights ſeruice diſcend to an infant or childe within age, from his mother, or from any of his auncestours, his father being yet aliue, in this caſe the Lord ſhall not haue the mariage of his heire, for during the life of his father, the ſonne ſhall be ward to no man. One ſhall not be ward, liuing his father.

Finally, it is to be knowen, that he which is gardein in chiualry in right, may before he hath ſeiſed the ward, grant the ſame eyther by deed or without deed to another man, then he to whom ſuch a graunt is made, is called gardein in fait.

Now as touching Reliefe, ye ſhall know, that if a man holdeth his lād by knights ſeruice, and dyeth, his heire being of full age (the full age of the male is xxi. yeares, of the female xiiii.) then the Lord of whom the land is holden ſhall haue of the heire reliefe.

Note ye, that all Earles, Barons, or other the Kings tenants (holding of him in chiefe by knights ſeruice) which die, their heire being of full age at the time of their deathes, that is to ſay, xxi. yeares of age, they ought to pay the olde reliefe for their inheritance, that is, the heire or heires of an Earle, for an whole Earledome 100. li. The heire or heires of a Baron for an whole Barony an 100. Markes. The heire or heires of a Knight, one 100. ſhillings, & he that hath leſſe, ſhall giue leſſe, according to the old

custome of fees. Like lawe is obserued of all others that hold of any other Lords immediatly vt supra.

Also a man may hold lands of a Lord by two knights fees, and then the heire being of full age at the death of his auncestour, shall pay to his Lord for relefe x. pounds.

Seruice of Castle garde. Chap. 25.

YE shall vnderstand, that a man may hold by knights seruice, and yet not hold by escuage, nor shal pay any escuage, for he may hold by castle garde, that is to say, by seruice to keepe a tower of his Lords castle, or some other place, vpon a reasonable warning, when his Lord heareth that enemies will come, or be already come into England.

Ground in the law.

This seruice is also knights seruice, & draweth to it, Ward, Mariage, and Relefe, as in all cases the common knights seruice doth.

Of graund Sergeantie. Chap. 26.

THere is also an other kinde of knights seruice, which is called graund sergeanty, that is, where a man holdeth his lands or tenements of the king by such seruice as he oweth in proper person to do, as to beare the Banner of our Soueraigne Lord the King, or his speare, or to conduct his hoste, or to be his Marshall, or to be the sewer, caruer, or butler, at the feast of the Coronation, or to be one of the Chamberlaines of the receipt of his Eschequer, or to doe like seruice to the King in proper person,

such

such maner of seruice I say is called graund Sergeantie, that is to say, a great or high seruice, and the cause why it is so called, is because it is the most honourable & most worthy seruice that is, for he that holdeth by escuage, is not appointed by his tenure, to do any other more speciall seruice then an other is bound that holdeth by escuage: but he that holdeth by grand sergeantie, is bound to doe some speciall seruice to the king. The most high seruice.

Also if he that holdeth of the king by graund sergeanty dieth, his heire being of full age, then the heire shall pay to the king for reliefe, not only C.s. as he that holdeth by escuage shall doe, but moreouer the cleare yearely value of those lands and tenements which he so holdeth of the king by graund sergeanty. Reliefe of the tenāt by grand sergeanty.

Furthermore, we shal obserue, that in the Marches of Scotland, some men hold of the king by cornage, that is to say, blowing of a horne, to the intent to warne the men of the Countrey, when they here that the Scots or other their enemies be comming, or be already entred into England, which seruice is also a kind of graund sergeantie. Graund sergeantie therefore is as much to say in Latin, as Magnum seruitium, that is to say, a great or high seruice. Like as Petie sergeantie, is called Paruum seruitium, that is to say, a little or small seruice. Tenure be Cornage. Definition of Sergeantie.

But to reuert againe to the matter, yee shall note, that if any tenant holdeth of any other lord then of the king by such seruice of cornage, then it is no graund sergeanty, but yet neuertheles, it is knights seruice, and draweth to it ward, ma-

riage,

Rule in the law.

riage and reliefe, for this is a rule infallable, that none can hold by graund sergeantie, but of the Kings Maiestie onely.

Finally, ye shal understand, that all they which hold of the king by this seruice called grand sergeanty, do hold of the king by knights seruice, and by vertue of this tenure the king shall haue of them ward, mariage, and reliefe, but escuage yet he shall not haue of them, vnlesse they hold by escuage of him by expresse speciall words.

Petie Sergeantie. Chap. 27.

Petie sergeantie is socage in effect.

TEnant by Petie Sergeantie, is he that holdeth his land immediately of our soueraigne Lorde the king by this maner of seruice, to pay to the king yerely, ether a Bow, a Speare, a Dagger, a payre of Gaimtlets, a payre of Spurres of Gold, a Shaft, or such other small things appertayning to the warre, and this seruice is in effect but socage, because that such a tenant is not bound by his tenure to go, ne do any thing in his owne proper person, touching the warre, but onely to render and pay yearely certaine things to the King, as a man ought to pay a rent. Wherefore this seruice of petite sergeanty is no knights seruice. But yet ye shall note, that a man cannot hold either by Petie sergeanty, neyther by Graund sergeanty, but of the king onely.

Homage auncestrell. Chap. 28.

TEnãt by homage auncestrell, is he which holdeth his land of his Lord by homage, and both he & his auncestors whole heire

he

hee is, haue holden the same land of the saide Lord, and of his ancestors time out of minde by homage, and haue done vnto them homage, and this is called homage auncestrell, by reason of the long continuance: which hath beene by title of prescription, aswell concerning the tenancie in the blood of the tenaunt, as concerning the lordship in the lord. And this seruice of homage auncestrel, draweth vnto it warranty (that is to say) if the Lord which is now in life, hath once receiued the homage of his tenant, hee ought to warrant the same tenaunt what time soeuer hee shall be impleaded or sued, for such lands so holden of him by homage auncestrell. Warrantie because of homage auncestrell.

Moreouer, such seruice of homage auncestrel, draweth vnto it acquital, that is to say, the lord ought to acquite the tenant against other lords that can demand any maner of seruice of the tenancie.

Wherefore if in this case the tenaunt which holdeth by homage auncestrell, be impleaded of his lands, and voucheth, or calleth his Lord to warrantie, who commeth in by processe, and demaundeth of the tenaunt what hee hath to binde him to the warrantie, and the tenaunt sheweth how he and his ancestors, whose heire he is, haue holden his landes of him and of his auncestours time out of minde, surely the Lord if he cannot denie this, and if he hath receiued the homage of such a tenaunt, is bound by the Law to warrant him his land, so that if the tenaunt lose his landes in default of the Lorde thus vouched, that is to say, called to warrantie, hee shall recouer against him as much in

value

value of those landes and tenements which the Lord had at the time of calling to warranty or at any time after. But if the Lord neuer receiued the homage of his tenant, then he may very well when hee is thus vouched, disclaime in the Lordship or seigniory, and so put out the tenant of his warrantie. Wherefore ye shall note, that in euery case where the Lord disclaimeth in his seigniorie in Court of Recorde, his seigniory or Lordship is extinct, and the tenant shall holde from henceforth of the next Lord to him that thus disclaimeth.

Thus ye perceiue that homage auncestrel is not, but whereas is a long continuance, as well in the blood of the tenant in respect of his tenancy, as in the blood of the Lord in respect of his seigniory. Wherfore if the tenant doth once alien his landes to an other, although hee purchase the same againe, yet he shall not hold any longer by homage auncestrel because of his discontinuance, but shall hold it now by the vulgar and accustomed homage.

Of Liueries. Chap. 29.

Tenant in chiefe of the king.

WHē one dieth which held of the king by knights seruice in Capite, that is to say in chief, his heirs being within age, the king (as before is declared) shal haue the wardship and custody, aswel of the lands as of the body, that is to wit the mariage, if he be vnmaried. But if the heire be of full age at the time of the death of such auncestor, yet shall the king by his prerogatiue royall haue primer seisin of all the landes, tenements, and other hereditaments,

Primer seisin.

bitaments, whereof such his tenant was seised in his demeane as of fee. And if such an heire will enter into his lands when hee commeth to his full age, before he sue his liuery and receiue seisin by the king, no free-hold shall accrew nor grow vnto him, but he shal be deemed an intruder into the kings possession, yea, and if he die so seised in the meane time, his wife shall haue no dowrie of such lands, wherefore it behoueth in any wise, that such heire aswell male as female, comming to full age before hee or she enter into their land, to sue liuerie. The maner and forme whereof according to the act of parliament lately promulgated and set foorth, I intend briefly to recite.

Intruder vpon the kings possession.

How hieres ought to sue their liueries, enacted 33. H. 8. cap. 21. Chap. 30.

NO person or persons hauing lands or tenements aboue the yearely value of v. li. shall haue any liuery before inquisition or office found before the Escheter or other Commissioner, by vertue of the Kings writ of Diem clausit extremum, or Commission directed out of the Chauncery or other Courts, hauing authoritie to make such a Writ or Commission, which shal not passe out of the same but by warrant, or bill assigned, & subscribed by the master of Wards or Liueries, the Surueior, Attorney, and recoueror of the said Court, or three, two, or one of them to be directed and deliuered to the chauncelor of England, or to any other Chauncelor or officer hauing power to awarde such

Writ Diem clausit extremum.

such Writs, and for the writing and sealing of the same, shall bee paide of the accustomed fees. But if the lands exceed not the said yearely value of v. li. then they shall pay for the seales of euery such writ or commission viii.d. and for the writing vi.d. and not aboue.

And the inquisitions and offices hereupon found, shall bee returned by the said Escheators, or Commissioners, into the same Court from whence the writ or Commission was awarded, which done, the clarkes of the pitie bagge shall receiue the same offices, and make a transcript thereof to the Maister of the Wards and Liueries. And then the saide Maister and the Surueyour, Atturney & generall Receiuor, or three of them, whereof the Maister or Surueyor to be one, shall couenant and indent with such persons for their liuery of the Castles, Manours, Lordships, landes, tenementes, and hereditaments, compriſed or not compriſed in such offices, and shall make and set a rate and price of the same, and appoint the dayes of payment thereof by Obligation to bee taken for the same to the king.

And euery bill, for any speciall or general liuery assigned, by the hands of the said Maister, surueyour, atturney, receiuour, or three of them, whereof the Maister, or Surueyour to be one, shall be warrant sufficient to the Lord Chamberlor, or other Officer, hauing power to passe liueries vnder any of the kings seales accordingly. In which case the clarkes of the pety bagge, or other clarkes, by whom the liueries be written, shall receiue aswell for themselues, as for other,

other, such fees as hath been accustomed.

Item euery person may sue at his pleasure a generall Liuery for any manours, lands, tenements, rents, reuersions, remainders, or other hereditaments, wherof the clearely yearly value shall not exceede xx.li. Prouided that an office be thereof found, and a warrant first obtained of the said Maister and others, as is aforesaid. Generall liuerie.

And where such generall liuery is sued, if the landes exceede the yearely value of v.li. they shall pay for the Seale xx.s. viii.d. & all other fees accustomed, as afterward shal be declared. But if they exceed not the yearely value of v.li. they shall pay but these fees following: that is to say, For the seale of the liuerie xii.d. To the Clarkes of the petie bagge for the writing, and the inrolling xx.d. For the respect of the homage in the Hanapar viii.d. To the Lorde great Chamberlaine xx.s. To the Maister of the Rolles xx.d. And the Clarke of the Liueries for the warrant and inrolling of the Liuerie xx.d.

Item no person or persons shall pay in the Exchequer, or any other Courts for the respect of homage, for any landes or hereditaments not exceeding the yearely value of v.li. aboue viii.d. And for the entring thereof, and warrant of atturney, aboue iiii.d. Respect of homage.

And the value of such landes and hereditaments not exceeding the yearly value of xx.li. shall bee taken as it is limitted in the offices founden thereof, except by the examinations and certificate of the said Maister, Surueyour, Atturney & Receiuor, or three of them, it shall

other-

otherwise appeare and be declared in any of the kings Courts.

Also no Escheatour shal sit only by verture of his office, for inquirie of the tenure, title, or value of any lands or other hereditaments holden of the king, being of the yearely value of v. li. or aboue, without the kings writ to him directed, vpon paine to forfait v. li. for euery time he shall so do. Neither shall he take for the finding of any office of lands not exceeding the yerely value of v. li. aboue xv. s. that is to say, vi. s. viii. d. for his owne fee, and iii. s. iiii. d. for the writing of the office. And for the charges of the Iurie iii. s. And for the officers that shall receiue the offices in any Court of record ii. s. vpon paine that the Escheator doing otherwise, shall for euery time forfait v. li. And vpon like paine the officers of euery Court of record where such inquisitions shall bee returned, beeing offered vnto them, within one monthe next after the finding therof, shall receiue them. The one moitie of all which forfeitures to the king, and the other to the partie that will sue for the same, &c.

Paine of forfait.

Fees of office.

And they which hereafter shall bee in case to sue liuerie, whose landes and tenements exceede not the yearely value of v. li. may lawfully sue foorth that generall liuerie by warrant from the said Courts, as is aforesaid, although none other inquisition be thereof had nor certified, paying neuertheles the fees aboue remembred.

Finally, euery person shall sue foorth his patent for his liuerie, within three moneths next after the assignement of his bill, or else his bill

assigned

assigned to be void and of none effect.

Hereafter ensueth the fees accustomed of the generall Liueries.

FIrst to the Clarkes of the pety bagge, for the respect of homage & fealty, the writing & inrolling xiiii. s. ii. d. To the Lord great Chamberlaine xl. s. To the Maister of the Rolles iii. li. To the clarkes of the liueries for writing of the Indentures & Obligations xx. s. beside counsel.

The fees of the speciall Liuerie accustomed to be paied, be these following, that is to say, for the Signet iii. li. x. s. For the priuie seale xxx. s. For the great seale xliii. s. viii. d. To the clarks of the petie bagge. xl. s. To the Maister of the Liueries clarkes xl. s. For inrollment of the knowledge of the Indenture, xii. s. To the lord great Chamberlaine of England xl. s. For the writ of the allowance for the same liuerie x. s. vi. d.

And note yt, that sometime in especiall cases the fees be more, and sometime lesse, as the case and matter doth require.

Hetherto haue we briefly touched all kinds of knights seruice, & things incident to the same. Now will we with like briefenes declare the other kinds of seruices which commonly be comprised vnder the generall name of Socage. For all lands or tenements, eyther they be holden by knights seruice, or elle by socage tenure, or at least by the nature of socage tenure, which in effect is all one. Wherefore first we shall define what Socage is in the proper signification, which done, we shall perusse the other kindes of seruice which be of the nature of socage tenure.

Of Socage.

Chap. 31.

What socage tenure is.

SOcage is properly where the tenaunt is bound to come with his yoke, that is, with his plowe to eare and sowe a parcell of the demeane landes of his Lord, which seruice in auncient time was very common, but now by the mutuall consent, both of the Lord and the tenant, it is conuerted for the most part into a yearely rent. Howbeit, the name of Socage abideth still. Wherefore now, all that is not knights seruice, is called by the name of socage. So that if a man holdeth by fealty onely, or by fealty and homage for all maner of seruice, it is but socage tenure, for homage alone maketh not knights seruice. Also if a man holdeth by escuage certaine, as I haue said heretofore, he holdeth in effect but by Socage.

Gardeine in socage.

Now where as a man holdeth his lands by Socage and dyeth, his heire being within the age of xiiii. yeares, the Lord shall not haue the ward, but the next of kinne to the heire, to who the heritage cannot discend, shall haue the title and wardship, aswell of the land, as of the heire, till the heire come to the age of xiiii. yeares. And such tutor or gardeine is called gardeine in socage, and shall render accounts to the heire, of the illues and profites that he hath receiued of the lands during such time, deducting his reasonable costes and expences, so that he shall not haue the wardship to his owne vse and profit, as the Lord which is gardeine in chiualry hath.

And in case the gardeine in socage dyeth before hee hath made his accompt, the heire is without

without remedy, because no writ of account, lyeth against the executors but for the king only.

Finally, yee shall understand, that when tenant in Socage dyeth, the Lorde of whom the land is held shall haue reliefe, that is to say, the value of the rent that is yearely due vnto him of the tenancie, beside the yearely rent, so that in effect after the death of his tenant, he shall haue of the heire two rentes, true that for the reliefe he may distraine forthwith, but for the accustomed rent he cannot distraine till the vsuall day of payment be come. Rent. Distresse.

Franke almoigne. Chap. 32.

THe tenaunt in franke Almoigne, that is to say in free Almes, is where a Bishop, Deane, or any other Ecclesiastical person holdeth of his Lord in pure and perpetuall Almes, and such tenure began first in olde time after this maner. When a man was seised in auncient time of certaine landes or tenements in his demesne, as of fee, and of the same tenements infeoffed an Abbot and his Conuent, or a Prior and his Conuent, or any other person Ecclesiasticall, as a Deane of a College, Maister of an Hospitall, or such like, to haue and to hold the same landes to them and to their successours for euer, in pure and perpetuall Almes, or in franke Almes, in these two cases the tenements should bee holden in franke Almoigne. The first tenure of franke almoigne.

By force of which tenure, they that hold in franke Almoigne after this sort, bee bound of

right before God, to make orisons & prayer, and to doe other diuine seruices for the soules of their grauntors & feoffors, and for the soules of their heires which be dead, and for the prosperous estate of them & their heirs, whilest they be aliue. And because of right they bee bound to this diuine seruice, they be discharged by the law to do any other prophane or corporall seruice, as fealtie, or such other like.

Tenant in frank almoign shall doe no fealty.

But neuertheless, if such as holde their tenements in franke almoigne, doe omit & leane vndone these diuine seruices whereunto they bee bound before God, the Lorde cannot distraine them, ne yet compell the by any other meanes by the course of the common law, but the only remedy is to complaine of the to their ordinary, who of right ought to compell such ecclesiastical persons to doe the diuine seruice due as aforesaid.

Tenant by diuine seruice.

But here yee shall note, that if a Parson of a Church or any other Ecclesiasticall person, did before the statutes of dissolution of abbeies, monasteries, &c. hold of the Lord by certaine diuine seruice to be done, as to sing masse euery fryday in the weeke, or Placebo & derige, or to finde a priest to sing masse, or to distribute in almes C. pence to a hundreth mē at such a day, in all these cases if such diuine seruice be vndone, the Lord may very well distraine, because the seruice is put here in certaine.

Distresse for diuine seruice.

Now as I said before, that if in olde time a man did enfeoffe such ecclesiasticall person after such sort, he should hold his landes in franke almoigne. But at this day it is otherwise, for by the reasō of the statute called, Quia emptores terrarum,

terrarum, Wiſtmin. 3. cap. 1. No man can alien ne graunt landes or tenements in fee ſimple, to hold of himſelfe, ſo that now if a man being ſeiſed of lands in fee ſimple, graunteth the ſame by licence to an Eccleſiaſticall perſon in franke almoigne, theſe words franke almoigne be voide, and the eccleſiaſticall perſon ſhall hold them immediately of the Lord of the feoffor by the ſame ſeruices that the feoffor held, ſo that no man can hold in franke almoigne but by force of a grant made before the ſaid Statute, onely the Kings Maieſtie excepted, for hee is out of the compaſſe of the Statute.

Finally, ye ſhal note, that whereas a man holdeth in franke almoigne, his Lord is bound by the lawe to acquite him of all manner of ſeruice that any other Lorde can haue or demaund out of the ſaide landes, ſo that if he doth not acquite him, but ſuffer him to be diſtrained, then he ſhall haue againſt his Lord a certaine Writ, called a Writ of meſne, and ſhall recouer againſt him his damages, and coſts of his ſuite. Writ of meſne.

Of Burgage. Chap. 33.

A Tenure in Burgage, is where an auncient borough is, of which the king is Lord, and they which haue tenements within the ſame borough, hold the ſame of the king, paying a certain yerely rent, which tenure in effect is but Socage tenure. Likewiſe it is, whereas any other Lorde, Spirituall or Temporall, is Lord of ſuch borough. Socage tenure.

Here ye ſhall note, that for the moſt part ſuch auncient Boroughs and Townes haue diuers cuſtomes and vſages which other Townes Cuſtome.

haue not. For some boroughes haue a custome that the youngest sonne shall inherite before the eldest, which custome is called commonly borough English.

Dower by custome.

Also in some borough, by the custome, the woman shall haue for her dowry all the landes and tenements whereof her husband was seised at any time during the matrimony and coneture.

Deuise by custome of borough.

Moreouer, in some boroughs a man may bequeath or deuise his landes or tenements by testament at the time of his death, and by force of such deuise or legacie, hee to whom the bequest is made after the death of the testator which made such testament, may by force of this auncient custome enter into the landes so to him bequeathed or deuised, without any linery of seison to him made, or further ceremony of lawe.

Howbeit, how & in what manner a man may at this day deuise his lands by his last will and testament, by force of a certaine new Statute, it shall be hereafter declared.

Diuers other customes in England there be contrary to the course of the common law, which if they be any thing probable, and may stand with reason, are good & effectuall, notwithstanding they be against the common lawe.

And note, that no custome is allowable, but such custome as hath beene vsed by title, of prescription or time out of minde.

Of Villenage, or bond seruice. Chap. 34.

A Tenant in Villenage, is properly when a Villaine, that is to say, a Bondman holdeth of his Lorde, whose Bondman he

he is, certaine landes or tenements, according to the custome of the mannour, or otherwise at the will of his Lord, & to do his Lord villaine ſeruice, as for to beare and to carry the dunge of his Lords, out of the Citie, or out of his Lords mannour, and to lay it vpon the demeane landes of the Lord, or to doe ſuch like ſeruice and villaines ſeruice. Howbeit, freemen in ſome places holde their tenements and landes of their Lords by cuſtome, by ſuch ſort of ſeruice, and their tenure is called tenure in villenage, and yet they themſelues be no villaines, nor of ſeruile condition, but free-men. For the land holden in villenage, maketh not the tenant a villaine, but contrariwiſe, a villaine may make free land to be villaine land vnto his Lord. As if a villaine purchaſeth land in fee ſimple, or fee taile, the Lord of the villaine may enter into the land ſo purchaſed by his bondman, and put him and his heires out for euer, and this done, the Lord if he will, may leaſe the ſame land to his villaine, to hold of him in villenage.

And heere yee ſhall vnderſtand, that ſeruitude or villenage, is the ordinance not of the law of nature, but of that Lawe, which is called Ius gentium, by which a man is made ſubiect contrarie to nature, vnto an other mans dominion. For hee that is a villaine or bondman, either he is ſo by title of preſcription, that is to ſay, hee and his auncestours haue beene villaines time out of minde, or elſe hee is a villaine by his owne confeſſion in ſome court of record, ſo that all villaines, either they bee borne villaines, or elſe they bee made ſo. They be

borne villaines, when their father being a bond man himselfe, begetteth them in lawfull wedlocke, either of a free woman, or of a bond woman, for so that the father be bond, the issue of him lawfully begotten must needes be bond by the Lawes of England, having no regard to the condition of the mother, whereas in the ciuill Law of the Romanes, it is cleane contrary, for there, pars sequitur ventrem, that is to say, the seruitude or bondage of the mother maketh the childe bond, and not the bondage of the father.

Bastard. Howbeit, the bastard sonne of a bond man shall not be bond, and the reason is, because a bastard is Nullius filius in the lawe, that is to say, no mans sonne.

They bee made bondmen or villaines two waies, either by their owne proper act, as when a free person being of full age, will come into a Court of record, and there confesseth himselfe bond to an other man.

Or else by the Lawes of Armes called Ius gentium, as when a man is taken prisoner in warres, and is compelled to serue and become the thrall and bondman of him that tooke him, the law calleth such a person a villaine, that is to say, a slaue and thrall.

Definition of Villaines. And ye shall note, that villaines be properly called in Latin Serui, because that when they be taken in warre, the Captaines be wont not to kill them, but to sel them, & so to saue their liues, so that they be called Serui a seruendo, that is to say, of serning. They be called Mancipia, a manu capiendo, because that they be taken by hand and power of their enemies.

Now

Nowe as I saide by the lawe of Nature, we are all borne free, but after that by the law of Gentilitie, seruitude or bondage did presse and inuade the worlde, then ensued the benefite of Manumission. Manumission is, quasi de manu emissio, that is to say, a giuing out of the hand or power. For so long as a man is in bondage and seruitude, he is subiect to the hand & power of an other, and when he is manumissed, he is made free, and deliuered from the said power, so that a Manumission is to say, a writing testifying that the Lord hath infranchised his villain, and all his offspring and sequell. Manumision.

Also if the Lord maketh to his bondman an Obligation of a certaine summe of money, or graunteth to him by his deede an annuitie or yerely pension, or leaseth to him by deed lands or tenements for terme of yeares, any of these acts do implie an infranchisement. What actes maketh Manumission in Law.

Likewise, if the Lord maketh a feoffement to his villaine, and maketh vnto him liuerie of seisin, this also is an infranchisement and secrete Manumission. Briefly to speake, whersoeuer the Lord compelleth his villaine by the course of the Lawe to doe that thing, that he might otherwise enforce him to do, or to suffer, without the authoritie and compulsion of the lawe, he doth by implicatiō infranchise his villaine, as if the Lord will bring against his villaine an action of debt, an action of account, of Couenant, or of Trespas, these and such like be in the eye of the Law infranchisements & Manumissions, because that the Lorde in all these cases may haue the effect & purpose of his suite, that Causes of infranchisement

that is to ſay, the goods, cattels, and correction of his bondman, without the compulſion of that law, euen by his owne proper power and authoritie which hee hath vpon his villaine. But if the Lord doth ſue his villaine by an appeal of felonie, the villaine being lawfully indicted of the ſame before, this is no tacite manumiſſion or infranchiſement, for the Lord though he haue power to beate his villaine, and to ſpoyle him of his goods, yet he cannot by the Lawe of this Realme put him to death.

Yee ſhall alſo vnderſtand, that if a mans bondman purchaſe landes, or acquite and get vnto him any other thing, the Lord may forthwith enter and ſeiſe the ſame into his owne handes. Wherefore if the Lord will bring againſt his villaine a Præcipe quod reddat, by which hee demaundeth againſt his villaine any landes or tenements, this implieth an infranchiſement, foraſmuch as hee bindeth himſelfe to the preſcript and authoritie of the lawe, whereas he might vſe his own authoritie by entring and ſeiſing the ſaid lands.

Finally, yee ſhall marke, that ſome villaines be called villaines in groſſe, and other ſome be called villaines regardant. In groſſe bee they of which the Lorde is ſeuerally ſeiſed, and not by reaſon of any lordſhip or manor, but they bee called regardant which do belong to a manor, of which the Lord is ſeiſed, and the ſaide villaines haue ben regardant, that is to ſay, reſpectant & attendant, time out of mind, to the Lord of the ſaid manour, in doing vnto him ſuch ſeruices as to a villaine appertaineth.

Of auncient demeſne. Chap. 35.

THere is alſo a certaine kinde of tenure which is called auncient demeſne, & thoſe tenaunts which holde by their ſeruice, be freeholders, and by charter, and not by copie of court Roll, or by the verge after the cuſtome of the manor, at the will of the Lord. And theſe tenants be ſuch as holde of thoſe Manors which were S. Edwards the king, or which were in the hands of king William the Cõqueror, and theſe manors be called the ancient demeſnes of the king, or the ancient demeſnes of the crowne of England. And to ſuch tenants which hold of ſuch manors, be many & diuers liberties giuen and graunted by the lawe, as to be quite of toll and paſſage, and ſuch like impoſitions, which be demaunded of men for their goods and cattels, ſold or bought in faires & markets by them, alſo to be quite and free of tare & tallage granted by Parliament, except that the Kings Maieſtie doe tare auncient demeſne as to him onely appertaineth, when he thinketh good, for great & vrgent conſiderations. Tenants alſo of auncient demeſne, ought to be quite of payments to the expences and charges of the knights which come to the Parliament, alſo they ought not to be impanelled nor put in Juries, and Enquells in the country, out of their manors or ſeignorie of auncient demeſne, for the lands which they hold of ſuch manor, vnles they haue other lands at the common law, for which they ought to be charged. And if ſuch tenaunts, or any of them

which

which hold of the Manor of auncient demesne be destrained to do vnto their Lord other seruices or customes then they or their auncestours haue vsed to doe, then may they sue a certaine Writ called a Monstrauerunt, directed to the Lord, commaunding him that he distraine them not for to doe other seruice or customes then they haue bene accustomed to do.

Writ of Monstrauerũt

And for further knowledge hereof, ye shall vnderstãd, that in the Eschequer ther is a booke called domesday, which booke was made in the time of the said S. Edward. And all the landes that were in the lesim, and in the handes of the said S. Edward at the time of the making of the said booke be auncient demeane.

But the lands which the were in other mens handes, though they be written in the said booke, be franke fee, and no auncient demesne.

Franke fee.

Finally, it is to be noted, that tenants of auncient demesne shall not bee impleaded for their said lands out of the manor wherof they so hold, and if they be, they may shew the matter & abate the writ. But if they once answere to the Writ, and iudgement giuen, then the lands haue lost the nature and benefit of auncient demesne, and are become franke fee, that is to say, pleadable at the Common lawe for euermore. And thus haue we spoken of the diuersitie of tenures.

Abatement of a writ.

Of Rents. Chap. 36.

FOrasmuch as vpon euerie tenure there is commonly reserued one rent or other, therefore I thinke it good somewhat to treate of Rents. But ye must vnderstand, that there be sundry

sundry sorts of rents. There is one kind of rent which is called Rent seruice. Another which is called Charge, and the third which is named in French, Rent seeke, that is to say in latine, Reditus siccus, a drie rent. Now rent seruice is so called, because it is knit to the tenure, and is as it were a seruice wherby a mã holdeth his lands or tenements, or at the least way when the rents be vnseuerably coupled & knit with the seruice, as for an example, where the tenant holdeth his land of the king, or of any other lord by fealty & by certaine rent, or by homage, fealty, & by certaine rent, or by any other sorts of seruices & by certain rent, this rent is called rent seruice. And here ye shall note, that if this rent seruice be at any time when it ought to be paide, behind and vnpaid, the Lord of whom the land or tenement is so holden, whether it be in fee simple, fee tail, for terme of life, for yeares, or at will, may of common right enter and distraine for the rent, though there be no mention at all, ne cause of distresse put in the deede or lease. I said before that the nature of this rent seruice is to be coupled and knit to the tenure. For where no tenure is, there can be no rent seruice. And therefore if at this day I bee seised of lands of fee simple, and make a deede of feoffement of the same to another in fee simple, reserving by the same deede a rent, this can be called no rent seruice, because there can bee now no tenure betweene the feoffour and the feoffee. Otherwise it is of feoffements in fee simple made before the Statute of Westminster the third, cap. 1. called Quia emptores terrarum. For before the

Diuision of rent seruice.

Distresse of cõmon right.

making

making of that statute, if a man had made a feoffment in fee simple, reseruing to him a certaine rent, yet though it had beene without deede, here had bin begun & created a new tenure betweene the feoffor and the feoffee, and the feoffee should haue holden of the feoffor, who by vertue of the same might of cõmon right haue distrained for such rẽt. But at this day by force of the said act, there can bee no such holding or tenure created or begun, & consequently, no rent seruice can be at this day reserued vpon any gift in fee simple, except it be in the Kings case, who being chiefe Lord of all, euer might and may, giue landes to be holde of him. Thus ye see, that at this day, no subiect can reserue any rẽt seruice vnto him, vnles the reuersion of the lands or tenements that he shal grant, be still in him, as where he graunteth them in fee taile, or maketh but a Lease for terme of life, or for certaine yeres, or else at will.

For in all these cases the reuersion of the fee simple remaineth still in him, and therefore if here be any rent reserued, it is to be called a rent seruice, and is of common right distrainable, though there be no clause of distresse in the deed of feoffement or lease.

But here ye wil aske me, when in the case before remembred, a man at this day graunteth cleane away the land or tenement from himselfe in fee simple, so that there is no maner of reuersion of the same remaining in him at all, & yet neuertheless reserueth vnto him by his deede a certaine rent, what maner of rent shall this be called? I answere, if there be in the deede indented any clause of distresse, that is, that if the rent bee be-

hinde

hinde vnpaied, it shall be lawful for the lordour to enter, & to distraine, it is called a rent charge, for as much as the land is charged therewith, but how? of common right, no, but only by vertue and force of the writing. But on the other side, if there be no such clause of distresse put in the Indenture, then the rent so reserued shal be called a rent secke. Charge.

Likewise, if a man that is seised of certaine lands, will graunt eyther by Indenture, or by deede Poll, that is to say, single and not indented, a yearely rent out of the same landes to an other, whether it bee in fee simple, fee taile, for terme of life, for yeares, or at will, with clause of distres, then this rent is called a rent charge, & hee to whom such rent is graunted, may for default of payment thereof enter & distraine. But contrary, if the graunt bee made without any such clause of distresse, it is called a rent secke, that is to say, a drie rent, because he cannot come to it, in case it be deemed by way of distres, in so much that if he were neuer seised of it, he is by the course of the common law without remedy. Otherwise it is of a rent charge, for here, he to whom the graunt is made when the rent is behind, may chuse whether he will sue a writ of Annuitie against the graunter, or distraine for the rent behind, & retaine the distres, til the time he be paied accordingly. But he cannot haue both remedies together, but must take him to the one, for if he once recouer by a writ of Annuity, then is the land discharged. And if he sue not his writ of Annuitie, but distraine for the arrerages, and the tenant sueth a replevin, whereupon the other Annuitie.

Estopple. anoweth the taking of the distres in court of record, then is the land charged, & the person of the graunter discharged of the action of annuitie.

Yee shall also understand, that if a man will that an other shall haue a rent charge comming out of his land, and yet will not that his person shal be by any meanes charged by writ of annuitie, he may then haue such clause in the ende of his deed. Proviso. Proviso quod præsens scriptum, nec quicquam in eo contentū vllo pacto se extendat ad onerandum personam meam, per breue seu actionē de annuitate, sed tantummodo valeat ad onerandū terras, fundos, & tenementa mea, de annuo redditu prædicto. If this or such like clause be added, then the land is charged, & the person of the graunter is discharged.

Also if a man will make a deede of graunt in this wise, that if Iohn at Stile be not yearely paied at the feast of Christmas for terme of his life xx. shillings sterling, that then it shall be lawfull for the leide Iohn at Stile, to distraine for it in the manor of Dale, this is a good rent charge, because the manor is charged with the rent by way of distres, & yet nevertheles in this case the person of him that made such deede is discharged of any action of annuitie, forasmuch as he graunted not by his deede any annuitie to the said Iohn at Stile, but onely graunted that he might distraine for such yearely rent.

Furthermore, ye shall note, that if a man hath a rent charge to him and to his heires comming out of certaine landes, and doth purchase any parcell of these landes, to him and to his heires, in this case the whole rent charge is

quen-

quenched and gone, and the annuitie also, the cause is this, that a rent charge cannot bee in such case apportioned. Otherwise it is of a rent seruice, as for example, if one which hath a rent seruice of xx.d. by yeare, doth purchase parcell of the land, out of which this yearely rent of xx.d. is comming, this shall not extinguish or drowne the whole rent, but for the parcell only. For rent seruice in such case may very well be apportioned and rated according to the value of the land. Yet there be some sorts of rents seruices, which in no wise can be apportioned. As where a tenant holdeth his land of his lord by the seruice, to render to his Lord yearely at such a feast, an horse lading of gold, a red rose, a gylouer, or such like, if in this case the Lord doth purchase parcell of the land thus of him holden, this seruice is gone, because such seruice cannot be seuered and apportioned. Also Bleuage is a seruice that may be very well apportioned, according to the difference and rate of the land.

Extinguishment.

Rent seruice cannot be apportioned.

But where any land is holden by homage and fealtie, if the Lord purchase parcell of the land, yet he shall haue his homage and fealtie still of his tenant.

We shall marke also, that if a man maketh a lease of lands to another for terme of life, reserning to him certaine rent, if in this case he granteth that rent to John at Stile, sauing to himselfe the reuersion of the said land, this rent is but rent seeke, because John at Stile that hath the rent, hath nothing in reuersion of the land.

But if he granteth the reuersion of the land

to Iohn at Noke for terme of life, and the tenant attorneth accordingly, then hath Iohn at Noke the rent as rent seruice, because hee hath the reuersion for terme of his life.

Rent is incident to a reuersion.

Likewise it is, if a man giueth landes or tenements in tayle, reseruing to him & to his heires certaine rent, or maketh a lease of the land for terme of life, reseruing certaine rent, if he granteth the reuersion to an other, and the tenant atturneth accordingly, the whole rent and seruice shall passe by this word Reuersion, because the rent and seruice in such case be incident to the reuersion, and doe passe by the graunt of the reuersion. But if he had graunted the rent onely, it had beene a rent secke.

What remedy a man hath to recouer his Rent when it is behind. Chap. 37.

I Shewed you before, that for a rent seruice if it be behind, yee may distraine in the ground, euen of common right, though there bee no such clause of distresse mentioned in the deede of feoffement, graunt, or lease.

Also for a rent charge ye may distrain, or bring your writ of annuitie, at your choise and election, as before is declared. But of a rent secke if yee were neuer seised of it, nor of any parcell thereof, yee be without remedy by course of the common Lawe, for yee cannot distraine for it, nor yet bring your writ of annuitie, but if yee were once seised of it, or of parcell thereof, & it is arrerages behind, then your remedy shal be this, yee must goe either by your selfe, or by your depu-

tie

putie to the land or tenement out of which the rent is comming, and there demaund the arrerages of the rent, which if the tenaunt denie to paie, this deniall is disseisin of the rent. Also if the tenant be not then ready to pay it, this countervaileth a deniall, which is a disseisin. Disseisin of rent secke.

Moreouer, if neyther the tenaunt nor no other man be remaining vpon the ground to pay the rent when yee demaund the arrerages, this also is a deniall in the lawe, and is in verie deed a disseisin. And for these disseisins ye may haue an assise of Nouel disseisin against the tenaunt, and shall recouer seisin of the rent, and the arrerages and your damnages and costes of your writ, and of your plea. And if after such recouerie and execution had, the rent bee againe at an other time denyed you, then yee may haue a writ of Redisseisin, and shal recouer your double damages, &c. Assise. In redisseisin double damages.

It shalbe therfore wisedome for a man when a rent is graunted by any person vnto him, to take of the tenaunt of the lande a penie or an halfe pennie in name of seisin of the rent, and then if at the next day of paiment the rent be denied him, he may haue an assise of Nouel disseisin. And ye shall note, that there be three causes of disseisin of ret seruice, that is to wit, rescous, repleuin, and inclosure. Rescous is, when the Lord vpon the lande holden of him distraineth for his rent behinde, and the distresse bee rescued from him, or if the Lord come vpon the lande to distraine, and the tenaunt or any other man for him will not suffer him, that is called Rescous. Three causes of disseisin of rent seruice.

Rebleuin.

Repleuin is, when the Lord hath distrained and repleuin is made of the distresse by writ, or by plaint.

Encloſure.

Encloſure is, where landes or tenements be so incloſed, that the Lord cannot come within the lands or tenements for to distraine. And the chiefe cause why such thinges so made be disseisin to the Lord, is forasmuch as the Lord is by this way disturbed of the meane & remedy, whereby hee ought to come and haue his rent, that is to wit, by distresse.

Foure causes of diſseiſin of rent charge.

And there be foure causes of disseisin of rent charge, that is to wit, rescous, repleuin, encloſure, & denier. For denier, or deniall, is as well a disseisin of a ret charge, as it is of rent secke. Finally, ye shall vnderstand, that there be 2. causes of disseisin of ret seck, that is, denial & incloſure.

And two of rent secke.

And it seemeth that there is yet another cause of disseisin of al the three rents aforesaid, that is to wit, this, whē the Lord commeth to the land holden of him, or whē he that hath a rent charge, or a rent secke, commeth to the land to distraine for the rent behinde, or to demand the rent, and the tenant hearing this, incountreth him, & forestalleth him the way with force and armes, and manaceth him in such sort, as hee dare not come to the ground for to distrain for his rent behind for feare of death or mutilatiō of his members: This is a disseisin, because the partie is disturbed of his meane, and lawfull remedie whereby he ought to come to his rent.

Finally, yee shall obserue and marke, that by an act of Parliament made in the xxii. yeare of our Soueraigne Lord K. Henrie the eight, it is lawfull for the executours and administra-

teurs

tours of tenaunts in fee ſimple, tenaunts in fee taile, tenants for terme of life, of rent ſeruices, rent charge, rent ſeckes, and of fee farmes, for arrerages of ſuch rents as were due vnto their teſtatours in their liues, either to diſtraine for the ſame, or at their election to bring an action of debt, except in ſuch lordſhips in Wales or in the Marches thereof, whereas the tenants haue vſed time out of minde, to pay vnto euery Lord as his firſt entrie into the Lordſhip any ſumme of money, for the redemption of al maner of outcries and penalties incurred at any time before their Lords entrie. Diſtreſse or action of debt.

Alſo by force of the ſaid act, the husband which was ſeiſed in the right of his wife, may after the death of his wife, eyther diſtraine or bring an action of debt for the arrerages of ſuch rents as were due and vnpaied in her life.

Likewiſe, it is of him that hath a rent for term of an other mans life, if hee for terme of whoſe life hee hath the rent, dieth, yet by vertue of the ſaid act, he or his executors and adminiſtrators, may eyther diſtraine or bring an action of debt for the arrerages due before the death of him, for terme of whoſe life he had the rent.

How auowries ought to be made of rents, and ſeruices, enacted An. 21. H. 8. Chap. 38.

WHere any lands be holde of any perſon by rents, cuſtomes, or ſeruices, if the Lord diſtraine vpon the ſame lands for any ſuch rents, cuſtomes, or ſeruices, and Replenin thereof bee ſued, the Lord may

auow, or his bayliffe or seruant may make conisance, or iustifie the taking vpon the same lands, as within his fee and seignorie, alledging in the said auowrie, conisance or iustification, the same landes to be holden of him without naming any person certaine to be tenant of the same, & without making any auowrie, iustification, or conisance vpon any person certaine. And likewise vpon euery writ sued of the second deliuerance. And they that make any such auowry, iustification, or conisance, if the same auowrie, conisance, or iustification be found for them, or the plaintiffe be non suite, or otherwise barred, then they shall recouer their whole damages and costes.

Also the said plaintifes and defendants shall haue like plees, and one aide prier (plees of disclaimer only except) as they might haue had before the making of this act.

Plees in auowrie.

Also such persons as by the common law may ioyne to the plaintife or defendant in the saide writs of Replegiare or second deliuerance, as well without Proces as by Proces, shall from henceforth also in this case ioyne vnto them, as well without processe as by processe, and haue like plees and like aduantages in all things (disclaimer onely except) as they might haue by the common law before this act.

An act for the assurance of farmors, made An. 32. H. 8. Chap. 39.

ALL Leases hereafter to bee made of any landes, or other hereditaments, by writing indented vnder seale, for terme of yeares, or for terme of life, by any persons being

of

of the age of xxi. yeares, hauing any estate of inheritance, either in fee simple, or in fee tayle, in their owne right, or in the right of their churches, or wiues, or ioyntly with their wiues, shall be good and effectuall against the lessours, their wiues, heires, and successors, according to the estate compiled in such Indenture of lease.

Surrender of the old lease.

Prouided that this act shall neither extende to any leases to be made of any landes, or hereditaments, being in the handes of any farmours, by vertue of any old lease, vnlesse the same olde lease be expired, surrendred, or ended, within one yeare after the making of the new lease, nor yet to any graunt to be made of the reuersion of any lands or hereditaments, nor to any lease of such lands or hereditaments, as haue not commonly beene letten to farme by the space of xx. yeares next before such lease therof made, nor to any lease to bee made without impeachment of wast, nor to any lease to be made aboue the number of xxi. yeares, or three liues at the most, from the day of the making therof. And that vpō such lease be reserued yearely during the same, due & paiable to the lessors, their heires & successors, to whom the land should haue come after the death of the successors, & to whom the reuersion therof shall pertaine, according to their estates & interestes, so much yerely rent or more, as hath been accustomably yelded for ỹ same, within xx. yeres next before such leases, and that he to whom the reuersion therof shall pertaine, after the death of such lessors, or their heires, shall haue such like remedy & aduantage against their farmours therof, their executours and assignes, as the

lessor himselfe should haue had.

The wife shall be party to the leale.

Prouided also, that the wife be made partie to euery such lease as shall bee made by her husband, of any lands being the inheritance of the wife, and that euery such lease be made by Indenture in the name of the husband & his wife, and she to seale thereunto. And that the rent be reserued to the husband & wife, and to the heires of the wife, according to her state of inheritance therein. And that the husband shall in no wise alien, discharge, graunt, or giue away the same rent reserued, nor any part thereof, longer then during the couerture, without it be by fine leuied by the said husband and wife.

Prouided furthermore, that this act extende not to giue libertie or power to any persons to take any more farmes, leases, or taking of any lands, or other hereditaments, then they might haue done before the making of this act: nor yet extend to giue any liberty to any Parson or Vicar of any church or vicarage, for to make any lease or graunt of any of their messuages, lands, tenements, tythes, profits, or hereditaments, belonging to their Churches or vicarages, otherwise then they might haue done before the making hereof, Anno 32. H. 8.

What graunt by a Corporation is good.

It is furthermore enacted, that the graunt, lease, or gift, or election, of the gouernour or ruler of any hospitall, colledge, deanry, or other Corporation, with the assent of the more part of such of the same as haue voice thereunto, shall be good and effectuall, any rule or statute made by any founder to the contrarie notwithstanding.

Of falsifying of recoueries by Farmours, enacted Anno. 21. H. 8 Chap. 49.

ALL Farmours or Lessees for terme of yeres may falsifie for their terme onely recoueries had by fayned titles, as well as tenant in free hold. And the same farmours, their executours and assignes, shall enioy their saide termes, according to their leases, against such recoueries, euen as if none such had been suffered. In which case, neuertheless the recouerer, after such recouerie had, shall haue like remedie against the farmours, by auowry, or action of debt, for rents and seruices reserued vpon the same leases, being due afore the same recoueries, and like actions for wast done after the same recoueries, as the lessour might haue had, if no such recouerie had beene had. Furthermore, no Statute staple, statute Marchant, nor execution by Elegit, shall be auoyded by any such fayned recouerie, but like remedie shall be had to auoide and falsifie the saide recouerie, as is ordained for the farmour or lessee for terme of yeares.

Auowrie or action of debt.

Of Tythes, and how they shall be recouered, enacted Anno. 32. H. 8. Chap. 41.

ALL persons shal truly pay their Tythes, and Offerings, according to the lawfull customes and vsages of Parishes and places where such Tythes or duties bee due. And if they doe wilfully withhold any parcell of them, the partie, whether he be ecclesiasticall, or lay,

lay, that should have them, may convent such persons before the Ordinarie, his Commissary, or other competent Minister or Judge of the place where such wrong shall bee done, according to the ecclesiasticall Lawes. And in every such cause or suite, the same Ordinary or Judge having the parties, or their procurator before him, shall proceede to the determination thereof ordinarily or summarily, according to the course of the said Lawes, and thereupon shall give sentence according.

And in case any of the parties of any matter concerning that suit doe appeale from the sentence & diffinitive judgement of the said Judge, then the same Judge forthwith upon appellation made, shall adiudge to the other partie the reasonable costes of his suite, and shall compell the same partie appellant, to pay the same by compulsary processe & censure of the said lawes, taking suertie of the other partie to whom such costes shall be adiudged, to restore the same to the appellant, if afterward the principall cause of that suite of appeal shall be adiudged against him. And so every Judge ecclesiasticall, shall iudge costes to the other party upon every appeale to bee made in any suite or cause of subtraction or detention of any tythes or offring, or in any other suite to be made concerning duties of such tythes or offrings.

And if any persons after such sentence given against them, shall obstinately refuse to pay their tythes or duties, or such summes of money so adiudged wherein they be condemned, then two Justices of the peace of the same Shire,

whereof

wherof one to be of the Quorum, shall vpon certificat or complaint to them made in writing by the Iudge that gaue the sentence, cause them to be attached and committed to the next Iaile, there to remaine without baile or mainprize, till they shall haue found sufficient sureties to bee bound by recognisance or otherwise before the same Iustices to the Kinges vse for the performance of the said iudgement.

Prouided, that no person shall be sued or otherwise compelled to pay any tythes for any landes, tenements, or hereditaments, which by the lawes of this realme are discharged, or not chargeable with the payment of any such tithes.

Also this act shall in no wise binde the inhabitants of London, and Suburbs of the same, to pay their tythes & offerings within the same Citie and Suburbs, otherwise then they should haue done before.

Furthermore, if any hauing an inheritance, freehold, terme or interest, in any personage, vicarage, portion, pencion, tythes, oblations, or other Ecclesiasticall profit, made or to bee made temporall, or admitted to be in temporall hands by the lawes or statutes of this realme, be disseised or otherwise put from the same, or any other person claiming to haue interest therin, the person so disseised or wrongfully put from his said right or possession, his heire, wife, and other to whom such wrong shall be done, may haue remedie in the Kings temporall Courts, as the case shal require for the recouery thereof, by writs original of præcipe qd reddat, assise or nouel disseisin. Mordæcester. Quod ei deforceat, writs

of

of dower, or other writs originall to be graunted in the chauncery, of euery such parsonage, vicarage, portion, pension, or other profit ecclesiasticall, according to the nature of the suit therof. And writs of couenant and other writs for fines to be leuied, & all other assurances to be made of any such personage or profits ecclesiasticall, shall be deuised & granted there, like as hath bin vsed for fines to be leuied, and assurance to be had of lands or other hereditaments, & all iudgements giuen vpon such writs originall granted for any the premisses, and all fines leuied & knowledged in any of the kings said courts thereof, shall be of like force as iudgement giuen, and fines leuied of lands, tenements, and hereditaments.

Of Mortuaries, enacted An. 21. H. 8. Chap. 42.

NO person spirituall, their farmors or bayliffes, shal call any person before any iudge Spirituall, for the recouery of any Mortuaries, more then is hereafter mentioned, vpon paine to forfeit for euery time, so much in value as they shall take aboue the summe here limited, and ouer that xl. s. to the partie grieued, for which he shal haue an action of debt by writ, bil, or informatio, wherin no wager of law, essoine, nor protection, shall be allowed.

First no mortuarie shalbe taken of any which at his death hath in mouable goods vnder the value of ten markes. Also no mortuarie shall be taken but onely where mortuaries haue beene vsed to be paide, and there after the forme hereafter mentioned. Nor in no mo places but one,

that

that is to wit, there where his moſt abiding is, and there but one. Nor no perſon ſhall take for the Mortuary of any perſon being at his death, of the value of ten marks aboue his debts paid, and vnder xxx.li. aboue iii.s.iiii.d. And of the valne of xxx. li. and vnder xl. not aboue vi.s. viii.d. And of the value of lx.li. or aboue, of any ſumme whatſoeuer it be, not aboue x.s.

Alſo no mortuarie ſhall be aſked nor paid for any woman couert baron, or childe, or any perſon not keeping houſe, or for any wayfaring man, but the mortuaries of ſuch waiſaring men, be anſwerable in that place wher they had their moſt dwelling at the time of their death.

Neuertheles ſuch ſpirituall perſon may take any thing, which ſhalbe diſpoſed or bequeathed to him, or to the high aultar of the Church.

Alſo nothing ſhalbe taken for Mortuarie in Wales, nor in the Marches of the ſame, nor in Calis or Barwick, or the Marches of the ſame, but only in ſuch places of the ſame, where Mortuaries haue bin accuſtomed to be paide, & there but only after the forme aboue ſpecified. Prouided that the Biſhops of Bangor, Landaff, S. Dauids, & S. Aſſe, and the Archdeacon of Cheſter, may take ſuch Mortuaries of the Prieſtes within their dioces & iuriſdictions, as heretofore haue bin accuſtomed. Prouided alſo, that in ſuch places where mortuaries haue bin accuſtomed to be taken of leſſe value, none ſhalbe compelled to pay any other mortuary, or more for any mortuary, then hath bin accuſtomed, nor no mortuary there ſhalbe demanded of any perſon exempt by this act vpon paine afore limited.

Of

Of Diſcontinnauce.

Chap. 43.

IT is called a diſcontinuance by the lawes of England, where he that hath the poſſeſſiō of lands or tenements for the time preſent, and yet not hauing the fee ſimple in himſelfe, nor in his owne right onely, maketh an alienation of the ſame to another, by reaſon whereof, he that ſhould haue them after him, and which then hath right vnto them, cannot enter, but is driuen to his remedie by way of action, in ſuch wiſe that the ſaid landes bee not vtterly ſhifted and gone from ſuch perſon or perſons as haue right vnto them, but be all onely diſcontinued for a time, till the perſon which after the death of ſuch diſcontinuer hath right vnto them, doe continue and bring them home againe, not by entrie, but by ſuite and way of action. As for example, a tenaunt in tayle of certaine landes doth enfeoffe an other in the ſame, in fee ſimple or fee tayle, and hath iſſue and dyeth, his iſſue cannot enter into the lands though he hath title and right vnto them, but is put to his action, which is called a Formedon in the deſcender. And if ſuch tenaunt entayle which maketh ſuch a feoffement, hath no iſſue at time of his death, it is yet neuertheleſſe a diſcontinuance to him, which is eyther in the reuerſion or in the remainder, ſo that neither the one nor the other can enter, but be driuen to their action, he in the reuerſion to his Formedon in the reuerter, and he in the remainder to his Formedon in the remainder.

Formedon in the diſcender.

Formedon in the reuerter or remainder.

In like maner if a Biſhop doth alien landes, which be parcell of his Biſhoprieke and dyeth, this

this is a diſcontinuance of his ſucceſſor, forasmuch as hee cannot enter, but is driuen to his writ of Entre ſine aſſenſu Capituli.

Entre ſine aſſenſu Capituli.

Semblable, if a Deane be ſole ſeiſed of lands in the right of his Deanry, and maketh ſuch an alienation, this is a diſcontinuance to his ſucceſſour. Alſo the Maiſter of an hoſpitall alieneth any lands of his hoſpitall, that is a diſcontinuance, & his ſucceſſor cannot enter, but is put to his writ, De ingreſſu ſine aſſenſu contratrum, & ſororum.

Ingreſſu ſine aſſenſu confratrum, & ſororum.

But if a Parſon, or a Vicar of a Church, will alien any of his glebe landes to an other in fee ſimple, or fee tayle, and dieth, or reſigneth his benefice, this is no diſcontinuance to his ſucceſſour, but he may very well enter, notwithſtanding ſuch alienation made by his predeceſſour. And the higheſt writ that a Parſon can haue, if his predeceſſour hath alienedd his glebe land, or loſt it by default, or reddition, is a Iuris vtrum. And furthermore note, that no tenant of ỹ land can by his or their act, diſcõtinue the right of him in the reuerſion, vnleſſe it be by feoffement with liuery & ſeiſin, or elſe by a releaſe with warranty.

Reddition, that is voluntarie yeelding.

And note, that ſuch things as paſſe by way of graunt by deede without liuerie and ſeiſin, cannot be diſcontinued, as an aduowſon, cõmon, or a villaine in groſſe, reuerſion, rent, charge, common for beaſts certaine, and ſuch other like.

Alſo yee ſhall vnderſtand, that in the xxxii. yeare of king Henry the 8. it was enacted, that no fine, feoffemẽt, or other act to be made or ſuffered by the huſband onely, of any landes or tenements, being the inheritance or freehold of

his wife, during the coueture betweene them, should be any discontinuance thereof, or be preiudiciall or hurtfull to the saide wife, or to her heires, or to such as should haue right, title, or interest to the same by the death of such wife, but that the same wife, and her heires, and such other to whom such right should appertaine after her decease, may then lawfully enter into al such landes and tenements, according to their rights and titles therein.

How recoueries by collusion against tenants for terme of life, is no discontinuance, enacted An. 32. H. 8. Chap. 44.

WHere diuers persons seised of lands and hereditaments, as tenants by the curteste of England, or otherwise only for terme of life or liues, haue heretofore suffered other persons by agreement or couine betweene them had, to recouer the same against them in the kings court, by reason whereof, they to whom the reuersion or remainder thereof hath belonged, haue after the deathes of such tenants been driuen to their actions for the recontinuance and obtayning of the said landes and tenements so recouered, and sometime haue been clearely disherited of the same: It is enacted, that all such recoueries hereafter to be had by agreement of the party, or by couine, or against any such particular tenant of lands or hereditaments, whereof he is, or hereafter shall be seised, as tenant by the curteste of England, tenant in tayle after possibilitie of issue extinct,

or

or otherwise for terme of life, shall from henceforth as against such persons to whom the reuersion or remainder shall then appertaine, and against their heires and successours be clearely void. Prouided that this act extend not, to any person that shall by good title recouer any hereditaments without fraud or couine, against any such particular tenant, by reason of any former right or title, nor yet to auoide any recouery to be had against any such particular tenant, by the assent and agreement of those in the reuersion or remainder, so that such assent and agreement do appeare of record in the kings Court.

How wrongfull disseisin is no discent in the law, enacted Anno 32 H.8. Chap. 45.

WHer diuers persons haue by strength & without title, entered into lands & tenements, & wrongfully disseised and dispossessed the rightfull owners and possessours therof, and so being seised by disseisin, haue thereof dyed seised, by reason of which dying seised, the parties that were so disseised and dispossessed, or such other persons as before such discent might haue lawfully entred into the saide lands & tenements, be thereby clearely excluded of their enterie into the land, and put to their action for their remedy and recouerie thereof: It is enacted, that the dying seised hereafter of any such disseisour, hauing no right or title therein, shall not be deemed any such discent in the law, as to take away the enterie of such persons or the heires, which at the time of the same discent had

good title of entrie into the ſame. Except that ſuch diſſeiſor hath had the peaceable poſſeſſion of his landes or tenements whereof he ſhall ſo die ſeiſed, by the ſpace of fiue yeres next after the diſſeiſin by him committed, without entrie or continuall claime, by ſuch as haue lawfull title thereunto.

The limitation of Preſcription, enacted An. 32. H. 8. Chap. 46.

NO perſon ſhall ſue or maintaine any writ of right, or make any title or claime to any lander, tenements, rents, annuities, commons, pentions, portions, corodies, or other hereditaments, of the poſſeſſion of his auncestours or predeceſſours, and declare any further ſeiſin or poſſeſſion of his auncestour or predeceſſour, but only of the ſeiſin or poſſeſſion of his auncestour or predeceſſour, which haue been ſeiſed of the ſame within fortie yeares, next before the feaſt of the ſame writ, or next before the ſaid title or claime ſo to be lied.

Limitation of 40. yeares.

Alſo, none ſhall ſue or maintaine any Aſſiſe of Mortdauncestour, coſinage, ayle, writ of Entrie vpon diſſeiſin done to any of his auncestors or predeceſſors, or any other action poſſeſſary vpon the poſſeſſion of any of his auncestors or predeceſſors, for lands or hereditaments of further ſeiſin or poſſeſſion of them, but onely his ſeiſin or poſſeſſion which was ſeiſed thereof within 50. yeares next before the feaſt of the originall of the ſame writ. And none ſhall maintaine action for lands or other hereditamēts vpon his own ſeiſin or poſſeſſion therein, about 30. yeares next before the feaſt of the originall of the ſame writ.

Limitation of 50. yeares.

Limitation of 30. yeares.

Item,

Item, none ſhall make any auowrie or conſiſance for a rent, ſuit, or ſeruice, & alledge any ſeiſin of the ſame in his auowrie or conſiſaunce in poſſeſſion of his anceſtors or predeceſſors, or in his owne poſſeſſion, or in the poſſeſſion of any other, whoſe eſtate he ſhall claime to haue aboue 50. yeares nert before the making of the ſaid auowrie or conſiſance. Moreouer, all Formedons in reuerter, Formedons in remainder, & Scire facias vppon fines of landes or other hereditaments to be ſued, ſhal be taken within 50. yeeres nert after the title of acti in fallen. And if any do ſue any of the ſaid actions or writs for lands or other hereditaments, or make any auowrie, conſiſance, preſcription or claime for any rent, ſuit, ſeruice, or other hereditaments, and if hee proue that he or his anceſtors or predeceſſors were in actuall poſſeſſion or ſeiſin therein, at any time within the yeares before limitted, if the ſame be trauerſed or denyed by the partie plaintiffe, demaundant or auowant, or by the partie tenaunt or defendant, he and his heires ſhal from henceforth be vtterly barred for euer, of euery the ſaid writs, actions, auowries, conſiſance, preſcripti, title and claime hereafter to be ſued or made for the ſame lands or other the premiſſes, for which ſuch action, writ, auowrie, conſiſaunce, title or claime hereafter ſhall be ſued or made.

Auowry.

Barre.

Prouided, that all ſuch perſons which now haue any of the ſaide actions, writs, auowries, Scire facias, conſiſaunce, preſcription, title, or clayme depending, or that hereafter ſhall ſue or bring anie of the ſaide writs or actions, or make anie of the ſaide auowries, conſiſaunces,

Whether eſtate ſhall take effect.

preſcription, titles, or claime, at any time before the feaſt of the aſcention of our Lord, which ſhal be in the yeere of our Lord, 1546. ſhall alledge this ſeiſon of their auncestors, or predeceſſors, or their owne poſſeſſion & ſeiſon, & alſo haue all other like aduantage in the ſame writs, actions, anowries, coniſances, preſcriptions & claimes, as they might haue had before the making of this ſtatute. Prouided alſo, that if any perſon be now within the age of xxi. yeeres, or couert baron, or in priſon, or out of this Realme, now hauing cauſe to bring any of the ſaid writs, or actions, or to make any anowries, coniſances, preſcriptions, or claimes, it ſhall be lawfull to ſuch perſon, to ſue or bring any of the ſaid actions, or to make any of the ſaid anowries, coniſances, titles, or claimes, at any time within ſixe yeeres next after ſuch perſon now being within age, ſhall accompliſh the age of xxi. yeres, or now being couert baron, ſhall be ſole, or now being in priſon, ſhall be at their libertie, or now being out of this Realme, ſhall come and bee within this Realme. And that euery ſuch perſon in their ſaid actions, anowries, coniſances, titles, or claimes, to be made, ſued, or commenced, within the ſaid ſixe yeeres, ſhall alledge the ſeiſon of their auncestors, or predeceſſors, or of their owne poſſeſſion, or of the poſſeſſiō of thole whole eſtate they ſtall then claime. And alſo within the ſame ſixe yeres ſhal haue like aduantage in the ſame, as they might haue had before the making of this act.

Prouided alſo, that if the ſaide perſons now being within age, or couert baron, in priſon, or out

out of this realme, doe die within age, or being couert or in prison, or out of this realme, or decease within vi. yeares next after they shall accomplish their full age, or shal be at large within this realme, or shall become sole and no determination or iudgement had of such title, actions, or rights so to the accrewed, then the next heire of such persons shall enioy like aduantage, to sue, demaund, auowe, declare, or make their said tytles, claimes or prescriptions, within fiue yeares next after the death of such persons, as the said infant after his full age, or the saide woman couert after the death of her husband, or the saide person being out of this realme after his repaire or comming into the same, or the said person imprisoned after his enlergement and comming out of prison, might haue had within fiue yeares then next ensuing, by force of the prouision last before rehearsed.

Prouided also, that if any persons before the said feast of the Ascention, sue any of the said actions, or make any auowrie, title, or claime, and the same happen by the death of any the parties thereunto, to bee abated before iudgement or determination thereof had, then the said persons being demandants, or auowants, or making any such conisance, prescription, title, or claime, being then aliue, and if not, then their next heires, may commence their action, and make the auowrie, conisaunce or claime vpon the same matter, within one yere next after such sute abated, and shall haue like aduantage to sue, demaunde, auowe, declare, or make their saide tytles, claimes, or prescription, within the

saide one yeare, as the demaundants in such writ or suite abated, or as such as did auow or make conisance, tytle, clayme or prescription, might haue enioyed in the former action or suite.

Attaint vpon falle verdict.

Prouided furthermore, that if any falle verdict hereafter be giuen in any of the saide actions, suites, auowries, prescriptions, titles or claymes, then the partie grieued may haue his attaint vpon euery such verdict, and the plaintife in the same attaint vpon iudgement for him giuen, shall haue like recouery, execution and other aduantage, as hereafter hath bin vsed.

Of Fines. Chap. 47.

FInes haue their name, because they make a finall end and determination of all suites, strifes and debates betweene men. For the due leuying whereof, it was enacted in the fourth yeare of King Henrie the seauenth, that they must be solemply before the Justices of the common place, redde and proclaymed the same Terme, and three Termes next following the ingrossement, at which time all the plees must cease. And such Fines shall bee a sufficient barre and discharge against all persons sauing women that bee couert baron, if such women bee not pleine to the same Fine, or such as bee within age, in prison, out of the Realme, or out of their right mindes. But these Fines shall not conclude, ne barre all Strangers which haue right to enter or to haue action, if they come within fiue yeares after such Proclamati-

ons

ons made, or (in case the cause of action falleth vnto them, after the fine so vnely leuied) if they come & commence their action and suit within fiue yeres next after such cause of action to them accrued. And they may sue against the takers of the profits. But if they that haue right thereto be within age, in pryson, couert baron, or out of the realme, or not in their right memorie, then their title or entrie shall be saued vnto them till they be of full age, out of pryson, discouert and sole, within the realme, or of right mind, and then within fiue yeares after, their action or entrie must be sued or made with effect.

Also by the said statute it shall be a good plea for all strangers, to say, that they that were parties to the fine, nor none other to their vse, had any thing in the tenements or lands at the time of the leuying of the fine.

Furthermore, in the xxxii. yeare of this king, for the auoyding of certaine doubts and ambiguities, it was enacted, that all fines, aswell heretofore leuied, as hereafter to be leuied, according to the saide statute of Henry the vii. by any person of the full age of xxi. yeares, of any landes or other hereditaments, being before the fine leuied, in any wise tayled vnto him, or any of his auncestours, in possession, reuersion, remainder, or in vse, shall be immediatly after the same fine leuied, ingrossed, and proclamatiō made, a sufficient barre and discharge for euer, aswell against him, and his heires, clayming the same onely by force of any such entayle, as against all other to their vse, so that the same fines bee not leuied to any woman

after the death of her husband, contrarie to the statute made the xi. yeare of Henry the seuenth, of landes and tenements of the inheritance or purchase of her husband, or of any of his auncestors giuen to her in dower, for terme of life, or in taile, in vse, or in possession. Except also all fines leuied, or to be leuied, of any such landes or hereditaments by the owners thereof, by any speciall act of Parliament made sith the saide fourth yeare of Henry the vii. bee restrained from making any alienations, discontinuances, or other alienations of the same. Also of such lands as be now in suite and variance in any of the kinges Courts, or whereof any euidences be now in demaund in the Chauncery, or which be already recouered. Except also fines leuied, or to be leuied by any person, of lands or tenements, graunted to him, or to his auncestours in tayle, either by the Kinges letters patents, or by vertue of any act of Parliament, whereof the reuersion is in the king. And confirmed in the 34. yeare of king H. the 8.

Of Testaments or last Willes. Chap. 48.

Deuision.

TEstamentum in Latine, is as much to say as mentis testatio, that is, a declaration or witnessing of a mans minde. And there bee two sortes of Testaments. The one is called Testamentum scriptum, that is, a written Testament, or last Will by writing, and the other is called Testamentum nuncupatiuum, a testament nuncupatiue, which is when a man doth expresse by mouth his last will and

Written Testament.

The testament nuncupatiue.

and teſtament without writing, by calling before him certaine of his neighbours, in whoſe preſence he doth ſignifie by words his laſt mind and will. And this for the moſt part men vſe to doe, when for feare of ſuddennelle of death, they dare not abide the writing of their will. And this will (vnleſſe it be in certaine caſes) is as ſtrong and as ſure, as is a Teſtament, or laſt will put in writing, and ſealed with the ſeale of the teſtator.

Alſo though a Teſtament by writing be not ſealed with the ſeale of the teſtator, yet is the teſtament good and effectuall in the law.

And ye ſhall alſo marke, that where a man maketh once his Teſtament and will, and afterward maketh an other will by words, if his laſt will be proued before the Ordinarie, and by him put in writing, and inſealed with his ſeale, ſuch laſt will ſhall auoid the firſt will, vnleſſe it be in ſpeciall caſes. And ſo alwaies the latter will and Teſtament ſhall auoid the former.

Finally, by an act made the xxi. yeare of king Henry the eight, it was ordained, that where part of the Executors named in the Teſtament wherein any landes or tenements bee willed to be ſolde by them, refuſe to take vpon them the adminiſtration, and the reſidue doe take the charge and adminiſtration vpon them, in this caſe all bargaines and ſales in the ſaide landes made onely by thoſe executors that tooke the adminiſtration of the teſtament vpon them, ſhould be as good and effectuall, as if all the reſidue of the executors ſo refuſing had ioyned in the making of the bargaine and ſale.

The

The difference betweene Executors and Administrators.

Chap. 44.

Executors is, when a man maketh his testament and last will, and therein nameth the person which shall execute his Testament, then he that is so named, is his executor, & such an executor shall haue an action against euerie debtor of his testator. And if the Executors haue assets, that is to say, sufficient in their hands, then shall euery one to whom the testator was in debt, haue action against the executor, if he haue an obligation or specialtie to shew. But in euery case where the testator might wage his law, there no action lyeth against the executor.

Assets in the hands of the executors.

Administrator is he, to whom the Ordinary committeth the administration and bestowing of the goods of a dead man, for default of an executor. And actions shall lye against him, and for him as for an executor, and he shall be charged to the value of the goods of the dead, and not further, if it be not by his false plea, or for that he hath wasted the goods of the dead. But if the Administrators die, his executors be not Administrators, but it behoueth the Ordinary to commit a newe administration. Howbeit if a stranger, I meane him that is neither executour named in the Testament and last will, nor yet administrator appointed by the Ordinarie, will take the goods of the dead, and minister of his owne head and minde, without lawfull authoritie, this person shal be charged and sued as an executor, and not as an administrator in an actiō which is brought against him by any creditor. But if the Ordinarie make a letter da

Executors of his owne wrong.

colligendum bona defuncti, he that hath such a letter is not administrator, but the action lyeth in this case against the ordinarie, as well as if he tooke the goods by his owne hand, or by the hand of any other his seruant, by any other commaundement.

An act of the probate of Testaments, made An. 21. H. 8. Chap. 5.

NOthing shall be taken by any hauing authoritie to take probation, insinuation or approbation, of any Testament wher the goods of the Testator, doe not amount aboue the value of C. s. except to the scribe for writing thereof vi. d. And for the Commission of administration of the goods of any dying intestate, not being likewise aboue C. s. vi. d. Also none hauing power to take probate of Testaments, shall refuse to approue Testaments being lawfully offered vnto them in writing with wax thereto affixed readie to be sealed, so that they be lawfully proued before the same ordinary to be true. And when the goods of the testator doe amount aboue an C. s. and not exceede xl. li. none shall take for the probation, registring, sealing and writing of any such Testament, aboue iii. s. vi. d. whereof to bee to them that haue authoritie to take the probation, ii. s. vi. d. and the other xii. d. to the scribe for registring.

And where the goodes amount aboue xl. li. then only v. s. to be taken, whereof to be to them that haue authoritie to take the probation ii. s. and vi. d. and the other ii. s. vi. d. to the scribe for

for the registring, or else if he refuse that ii.s. vi.d. then he to haue for euery x. lines, euery line containing in length x. inches, a pennie.

And they that haue authoritie as is aboue said, shall approue, insinuate, seale and register the testamẽts, and deliuer them sealed with the seale of their Office, to the executors for the summe aboue said, & that with conuenient speed without any frustratorie delay.

And if any person dye intestate, or the executors refuse to proue the testament, then they hauing authoritie as is aboue said, shall graunt the administratiõ of the goods to the widow of the person deceased, or to the next of kin, or to both, after their discretion, taking suerty of them for the true administration of the goods and debts, which they shalbe so authorised to minister. And where one or diuers claime the administration as next of kin, which bee egall in degree of kinred, or where any one person desireth the administration as next of kin, where indeede diuers persons bee in equalitie of kinred, then in any such case the ordinary shall be at libertie, to take one or moe making request. And where diuers require the administration, or where but one or mo of them, & not all being in like degree make request, the the ordinarie shal admit the widow, and him or them only making request, or any of them, taking nothing for the same, where the person disseised died not worth C.s. And if he died worth C.s. & not aboue xl.li. then ii.s.vi.d. onely to be taken. And the executor or administrator calling to him the debtors, two at the least: or such persons to whom any legacie was

made

made, and if they refuſe them, two next of kinne to the perſon deceaſed, and in their default, two other honeſt perſons ſhall by their diſcretions make a true inuentory indented of all the goods, which perſons ſwearing before the Biſhop or his officers to be true, ſhall deliuer the one part thereof vnto them, and the other keep himſelfe. And none hauing authoritie to take probate of teſtaments vpon paine contayned in this Statute, which ſhall refuſe to take any ſuch inuentorie preſented or rendred to them. Inuentorie of goods.

Prouided, if any perſon ſhall diſpoſe or will by his teſtament, any lands or hereditaments to be ſolde, that the money or profits of the ſame, be accounted for goods or cattels.

And they hauing the authority abouelaid vpō the deliuery of the ſeale and ſigne of the teſtator, ſhall cauſe the ſame to be defaced, & incontinent ſhal redelliuer to the executor without any claim, and if any require a copy of the teſtament, & inuentorie, thē they hauing authoritie of their miniſters, ſhal without delay deliuer them a copie, taking therefore, or elſe for the regeſtring of the ſame as before, or euery ten lines 1.d.

Prouided, that where they hauing authoritie as is abouelaid, haue vſed to take leſſe for the probate of teſtaments, or other things concerning the ſame, then is here ſpecified, they ſhall take as they did before this act.

Now if any that haue authoritie to take probate of teſtaments or their miniſters, doe attempt againſt this act, they ſhall forfeit for euery time to the partie grieued as much money as they ſhall take contrarie to this act. And ouer

that

that x.li. the one halfe to the King, the other to the partie grieued, that will sue by action of debt, bill, information, or otherwise in any of ỹ kings courts, wherein no essoin, protection nor wager of the law shall be allowed. And euery of them shalbe charged for himselfe, and for none other.

Prouided, that euery one hauing authoritie aboue said, may call before them euery person so named executors, to the intent to proue and refuse the Testament, and to bring inuentories, and to do euery other thing concerning the same, as they might before this act, so neither they nor their ministers shall take aboue the fees limitted by this act.

How lands and tenements may be by testament or otherwise disposed, enacted An. xxxj. H. viij.

EVery person hauing landes or other hereditaments holden in socage, or of the nature of socage tenure in chiefe, and not hauing any lands or hereditaments holden of the King by knights seruice, or socage tenure in chiefe, or of the nature of socage tenure in chiefe, nor yet of any other person by knights seruice, may giue, dispose, and deuise, as well by Testament in writing, as otherwise by an act lawfully executed in his life, all his said landes or hereditaments, or any of them.

And euery person hauing lands or other hereditaments holden of the King in socage, or of the nature of socage tenure in chiefe, and hauing also any other lands or hereditaments holden of any other person in socage, or of the na-

ture

bare of ſocage tenure, and not haning any hereditaments holden of the king, or of any other by knights ſeruice, may from the ſaid time giue & deuiſe, aſwell by teſtament in writing, as otherwiſe by any act lawfully executed in his life, all and euery of them at his pleaſure: ſauing to the king all his right of primer ſeiſin and reliefes, and alſo all other rights and dueties for tenure in ſocage, or of the nature of ſocage tenure in chiefe, as heretofore hath bene accuſtomed, the ſame to bee taken and ſued out of the Kinges handes by the perſon to whom any ſuch landes ſhall bee diſpoſed or deuiſed, in like maner as hath beene vſed by any heire or heires before the making of this ſtatute. And ſauing and reſerning alſo fines for alienations of ſuch landes & hereditaments holden of the King in ſocage, or of the nature of ſocage tenure in chiefe, whereof ſhal be any alteration of freehold or inheritance made by will or otherwiſe, as is aforeſaid. Primer ſeiſin. Reliefes.

Item, all perſons haning landes or other hereditaments of eſtate of inheritance holden of the king in chiefe by knights ſeruice, or of the nature of knights ſeruice in chiefe, may giue, will, or aſſigne, two parts of the ſame, in three parts to be deuided, or elſe as much thereof as ſhall amount to the yearely value of two parts of the ſame, in three parts to be deuided in certaintie and by ſpeciall deuiſions, as it may be knowen in ſeuerally, for the aduancement of his wife, preferment of his children, and payment of his debtes, or otherwiſe at his pleaſure. Sauing to the king aſwell the wardſhip & primer ſeiſin of as much as ſhal amount to the clere yerely value

of

the third part thereof, without diminution, dower, fraud, couin, charge, or abridgement thereof, as alſo all fines for alienations of all ſuch lands holde of him by knights ſeruice in chiefe, whereof ſhall be any alteration of freehold nor of inheritance made by will, or otherwiſe. And euery perſon hauing landes or tenements of eſtate of inheritance holden of the king in chiefe by knights ſeruice, and other landes holden of him, or by any other by knights ſeruice, or otherwiſe, may giue or aſſigne by his teſtament, or otherwiſe as is aforeſaid, two parts thereof, in three parts to be deuided, or elſe as much therof as ſhall extend to the yerely value of two parts, or be deuided in certaintie. Sauing to the king, as well the wardſhip & primer ſeiſin of as much as ſhall amount to the yearely value of the third part, without diminution, &c. As alſo for all fines for alienation, as is aboue ſaid.

Fines for alienation.

Item, euer perſon holding landes or tenements onely, of any other then the king by knights ſeruice, and other lands and tenements in ſocage, or of the nature of ſocage tenure, may giue, diſpoſe, or aſſure by teſtament, or otherwiſe, two parts thereof holden by knights ſeruice, as much as ſhall amount to the full yearely value of two parts, and alſo all the landes and tenements holden by ſocage, or of the nature of ſocage tenure at his pleaſure. Sauing to the Lord of the landes and tenements holden by knights ſeruice for his wardſhip, as much therefore as ſhall amount to the cleare yearely value of the third part, without diminution, &c.

And euery perſon holding onely of the king

by

by knights ſeruice, but not in chiefe, and alſo other hereditaments of others by knights ſeruice, and holding alſo other hereditaments of any other perſon in ſocage, or of the nature of ſocage tenure, may giue and aſſure by his laſt will or otherwiſe, two parts of that is holden of the king by knights ſeruice, and two parts of that is holden of any other perſon by knights ſeruice, or as much of either of them as ſhall amount to the full yerely value of two parts, and alſo all his lands and tenements ſo holden in ſocage, or of the nature of ſocage tenure. Sauing alwell to the king the wardſhip of as much as ſhal extend to the cleere yearely value of the third part of the ſame ſo holden of him by knights ſeruice, without adminution, &c. As alſo to the Lordes of whom any of the ſaid lands been holden by knights ſeruice for the wardſhip as much of the ſame as ſhall amount to the cleere yearely value of the third part, in maner aboue declared. And if that third part which in any of the caſes aboueſaid, ſhall come to the king, do not amount to the cleere yearely value of the full fourth part of all the ſaid hereditaments, whereof the king ſhall bee intitled to haue the cuſtodie or primer ſeiſin: then the king may take into his handes as much of the other two parts of the ſaid hereditaments, as with that of the ſame hereditaments remaining in his handes, ſhall make up the cleere yearely value of the third part thereof ſo to bee had to him in title of wardſhip and primer ſeiſin. And like beneſite to bee giuen to euery Lord, of whom any ſuch hereditament ſhall bee holden by knights ſeruice, concerning

onely his third part for title of wardship.

Also all persons shal sue their liueries for possessions, reuersions, or remainders, and also pay reliefes, & heriots, like as they should haue done before the making thereof. And fines for alienation shal be paied in the Chauncery vpon writs of Entre in the post to be obtained there, for common recoueries to be suffered of any landes holden of the king in chiefe, in like maner as is vsed vpon alienations of landes so holden in chiefe by fine or feoffement.

Prouided, that in such cales where fines for alienation shall be payed in the Chauncerie for writs of Entre in the post as is forsaide, none other fine shall be payed there for any such writs.

Item, where two or more persons hold of the king by knights seruice ioyntly to them, and to the heires of one of them, and he that hath the inheritance thereof dyeth, his heires being within age, the king shall haue the ward and mariage of the body of such heire, the like of the freeholder or freeholders of the landes so holden by knights seruice notwithstanding.

Sauing to all women such right and title of dower as they ought to haue of any landes or tenements to be assigned vnto them out of the two parts of the said landes or tenements seuered from the third part, as is aboue said, and not otherwise. And sauing also to the king the reuersion of all such tenements in ioynture, and dower, immediatly after the death of such tenant, if they shall happen to dye, during the nonage of the kings wardes.

Of

An. 32. H. 8.

IT is enacted, that from the first day of Julie in the yeare of our Lord 1540. all Mariages within this Church of England, contracted betweene lawfull persons, as by this act we declare, all persons to be lawfull that bee not prohibited by Gods lawe to marrie, such marriages, being contract and solemnized in the face of the Church, and consummate with bodily knowledge of fruit of children, or childe being had therein betweene the parties so married, shall be deemed and taken to be lawfull, good and indissoluble, notwithstanding any precontract of matrimony not cõsummate with bodily knowledge eyther of the persons so married, or both shall have made with any other before the time of contracting that mariage which is solemnized and consummate, or whereof such fruit is ensued or may ensue as afore, and notwithstanding any dispensation, prescription, lawe, or other thing graunted or confirmed by act or otherwise. And that no reuersion or prohibition (Gods lawe except) shall trouble, unpeach any mariage without leuiticall degrees. And that no person shall after the said first day of July aforesaide, be admitted to any of the spirituall courts, within this the Kinges realme, or any his other landes and dominions to any proces, plee, or allegation, contrary to this act.

FINIS.

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